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THE

FISHERY LAWS

OF

IRELAND.

BY

ROBERT LONGFIELD, ESQ.,
Q.C., M.P.

*"Semper tibi pendeat hamus;
Quo minime credas gurgite, piscis erit."*

ml

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PREFACE.

THE improvements which the Act 26 & 27 Vict. c. 114, has affected in the Irish Fishery Laws are many and important. It has provided for the extension of the weekly and annual close time; for an increase of licence duty on fixed engines; and power and machinery for inquiry into and removing all such bag nets, Scotch and stake weirs as may be in any degree injurious to the public rights of free navigation or of fishing, or which are contrary to any law in force in Ireland. Bag nets in estuaries, rivers, and within three miles of the mouths of rivers, may be immediately removed; and all other fixed nets await an impartial trial of their legality, and a just condemnation or merited permission for their continued existence. The statute has prohibited, for the future, the erection of any fixed nets whatever, and has also provided for the construction within one year of Queen's gaps in all fishing weirs across rivers now without them—such as the fine rivers Lee, Blackwater—and the enlarging of those which already exist. It contains, also, minor but important improvements in the laws as to the use of nets, and the construction of the Boards of Conservators.

But the advantage which the public may derive from this legislation will depend entirely on the knowledge they

may possess of their rights and remedies, and the amount of co-operation which they may afford the Commissioners in the discharge of their difficult labours, and the enforcement of the law.

To supply those who may feel interested in the prosperity of the Irish Fisheries with the necessary knowledge of the laws affecting them, is the object of the following treatise.

The public anxiety is, at present, chiefly directed to the exercise of the powers vested in the Commissioners of inquiring into the legality and the removal of all unlawful fixed engines and weirs. The law on this head, therefore, I have treated most fully; not, however, to the neglect of other important branches of the subject which will have a permanent effect on the productiveness of our fisheries.

I have endeavoured, while avoiding the constant use of technical language, to state the law clearly and correctly in the very words of the statutes, or of their expositors, the judges of the land. I trust, therefore, that this little work may be found a plain and safe guide to all classes of the public in attaining the amount of knowledge necessary to promote the interests of our Fisheries, and to the performance of their duties in preserving them.

The public must themselves supply the energy and united exertion, which alone can make the recent alteration in the law beneficial in its results, or useful in its operation.

ROBERT LONGFIELD.

October 7, 1863.

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THE FISHERY LAWS OF IRELAND.

CHAPTER I.

COMMON LAW RIGHTS OF FISHING.

I. NATURE, which has divided all the waters of the earth into salt and fresh, tidal and inland, the salt and tidal waters being generally navigable, and the others not, and which has to each allotted its distinct kinds of fishes, while few only are common to both, suggests that the Fishery Laws of Ireland may be conveniently considered with reference to the natural divisions of its waters.

II. A long series of enactments commencing with the earliest periods of our legislative history, and ending with a statute of the present year, has so far regulated the Irish Fisheries, that little may be thought to remain, to which the Common or unwritten Law is applicable; but it is necessary to explain clearly what the Common Law rights of fishing are, that the reader may better understand the many important changes wrought in them by positive enactments, and the enactments themselves.

III. First, then, of the Common Law rights of fishing in tidal waters, including the open sea, and estuaries, and navigable rivers.

Despite the doubts or censures of writers on the Law of Nations, who considered it equally unjust and difficult for States to claim the ownership or sovereignty of the seas adjoining the coasts of their dominions, (a) the monarchs of England have invariably asserted their rights to the sea within certain limits, and to the soil or bed of the seas surrounding their kingdoms between the high and low water-marks of ordinary tides. (b) These marks are formed in theory by the lines coinciding with the average or mean heights and falls of all *ordinary* tides, equinoctial as well as others, excluding, however, extraordinary overflows. (c)

IV. As to harbours and estuaries, tidal waters and navigable rivers, so far as the sea ebbs and flows, the monarch of Great Britain is at Common Law deemed the original proprietor of the soil or bed of these places, and of the waters themselves and whatever rights flow from such ownership. "It is a fundamental maxim of the English law that the king is the universal lord and proprietor of all lands in his kingdom, and that no man doth or can possess any part of it but what has mediately or immediately been derived as a gift from him (d)" As the word "lands" in law extend to such

(a) Vattel, Ed. 1793, pages 116, 119,

(b) And even to the seas between England and Ireland. Three miles seaward were the limits imposed for exclusive right of fishing by British subjects, by the convention between England and France.—See 6 & 7 Vict., c. 79, and Schedule.

(c) *Attorney-General v. Chambers*, 4 D. M. & G., 206, Hale, D. J. M., ch. 6; "Land Owner's Guide," 302; Hargrave, L. T., Hale, D. J. M., 12.

(d) Blackstone, vol. 2, p. 51; and as to the sea and its arms and soil, Hale, D. J. M., 12 *et Selden mare clausum*. I have adopted Blackstone's note as most applicable to all waters.

portions of it as are covered with water, and navigable rivers, harbours, creeks, and arms of the sea in a direct line between headlands visible one from the other are by all deemed parcels of the Crown's dominions, it follows that the original chief proprietorship of these waters and of the lands covered with them was the same, the monarch of these realms (*a*). As to inland rivers which were not navigable, the rule as to the chief proprietorship or original ownership was similar. All vested in the monarch.

V. But almost contemporary, indeed, perhaps anterior to the establishment of this maxim of law, and which, as to the seas, tidal and navigable waters, may have been at first not so much for the private benefit of the monarch as for the protection of the safety of the realm and the rights of his subjects, there were recognised as vested in all the subjects of the realm, two well-established rights, that of free navigation and of free fishing. The first was considered so inherent to the nature or existence of navigable waters that the monarch was only deemed the protector of his subjects' rights as "admiral of the seas;" and he could not by any act grant or charter defraud them of this right (*b*), nor was there any legal limitation as to the purpose for which the subject availed himself of this right, or the mode in which it was exercised, in large ships, or in the smallest boats, for fishing or commerce.

(*a*) Vide Lefroy's, C.J., judgment, *Malcomson v. O'Dea*; H. of L. C., case, 362, and the authorities cited by him; *Gammell v. Woods and Forests*, 3 Mac. H. of L. C. 419.

(*b*) Hale D. J. M. 22. The public right of navigation in such waters is too clear to admit of doubt or want authority.

VI. But the public right of fishing in navigable waters was not nearly so extensive; and the monarchs of England at a very early period assumed the beneficial ownership of the fishings over those waters, the soil or bed of which was considered to be vested in them, and the right to exclude from portions of them, either directly by the Crown officers, or indirectly by the Crown's grantees, the public from the enjoyment of their Common Law or original rights of fishery. This exclusion of the public from their "common right of fishing in all navigable waters is by some considered as founded on usurpation by the early Norman kings (a)." But the original right of the Crown to exercise or create "a several fishery" by its grant or charter in all navigable waters, and thus to exclude the public rights, is now clear and indisputable. One of our most eminent judges, the present Chief Justice of the Queen's Bench, thus states the law on this point (b):—"I admit that the subject has what has been aptly described as a right of commonage of fishery in every such tidal and navigable river, unless in that part of it which may have been appropriated and set apart by the Crown to a particular subject; but that the Crown, *before Magna Charta*, had a right to appropriate and set apart a portion of a tidal navigable river so as to abridge the Common Law right of the subject in that portion of it, is a proposition which stands upon such a footing of authority as cannot, in my judgment, now be questioned (c)." He then proceeded to cite with the approval and respect which

(a) Perrin, J., *Malcomson v. O'Dea*, 357; Phear on Waters, 440.

(b) *Malcomson v. O'Dea*, H. of L. P. C. 362-3.

(c) See also Hale, D. J. M. 7, *et seq.* *Williams v. Wilcox*, 8 A. & E. 314.

the name of Hale suggests to all lawyers, the following passages from his work, "De Jure Maris," chap. 4 & 5 (a) :—"The king's right of property or ownership in the sea and soil thereof is evidenced principally in three things that follow : 1st,—The right of fishing in the sea and the creeks and arms thereof is originally lodged in the Crown, as the right of depasturing is originally lodged in the owner of the waste whereof he is lord, or as the right of fishing belongs to him who is the owner of a private or inland river. But though the king is owner of this great waste (the sea), and as a consequent of his propriety, hath the primary right of fishing in the sea, and the creeks and arms thereof, yet the common people of England have regularly a liberty of fishing in the sea, or creeks or arms thereof (including navigable rivers so far as the influence of the tide reaches) (b), as a *public common of piscary*, and may not without injury to their right be restrained of it, unless in such places, creeks, or navigable rivers, where either the king or some particular subject hath gained a propriety exclusive of that common liberty."

These extracts from the work of Hale, and from the judgment of C. J. Lefroy, sufficiently prove two most important positions :—

1st,—The presumptive general right of the public to a common of fishery or piscary in the sea, whether near the coasts or in harbours, creeks, and navigable tidal rivers, deemed part of the sea.

2nd,—That such common of piscary or fishing may

(a) Hargrave's L. Tracts, 10 et. seq.

(b) Sir John Davies' Rep. 152. Such portion of the river is said to be a branch of the sea.

have been abridged or excluded, and the sole right of fishing in portions of such waters became vested in a subject.

VII. But this exclusion of the public can only be by an original grant, or re-grant from the Crown, or royal charter in very clear and distinct words, or by custom or prescription, which supposes in truth the existence originally of such a grant or royal charter, on which the exercise of this right to exclude the public might well have been founded (*a*). It must, however, be borne in mind when a title is claimed under a presumption of a grant from the Crown, that the first presumption of law is in favour of the *public* right of fishing in navigable waters and against the claim of a several or exclusive fishery in any person. Evidence of ownership of the land adjoining the shore affords no presumption whatever in favour of the owner of this land to the right to the shore itself or to a several fishery excluding the public right. Indeed if the original grant from the Crown is produced, and it does not in the clearest, and most express, and not merely, general words, (*b*) grant the soil or shore and right of several fishery, this strengthens the public right, and no judge would direct a jury to presume, and no jury could presume a grant from the Crown against the presumption of the clear public right. Grants from the Crown are not now to be easily presumed, as it is well known that if any grant was made by the Crown within the last two or three hundred years, it could be produced or distinct evidence of its contents be

(*a*) Vide *Malcamson v. O'Dea*, H. of L. P. C., judgments of Lefroy C.J., Hayes, J., &c. (*b*) *Davies R.* 155.

given (a) from the enrolment or the Crown records. Even a forty years' user was held insufficient to establish an exclusive right over an arm of the sea (b).

VIII. The appropriation by the Crown or right exercised to a several fishery in navigable waters, excluding the public right, must have existed before *Magna Charta*, although the grant or charter under which the right is exercised in modern times may have been subsequent, there being nothing in *Magna Charta* or our law to prevent the Crown's title to a several or appropriated fishery, if once established before *Magna Charta*, being re-granted at any time when re-vested in the Crown by forfeiture or otherwise after the original creation (c).

IX. Though these rights of the Crown and of a subject derived from the Crown by grant or charter to "a several fishery," by which is always intended one exclusive of the public common fishery or common of piscary, originally depended on the ownership of the soil covered with the tidal navigable waters, they may, however, be distinct. The owner of a "several fishery" is presumptively the owner of the soil under it; but mere user for forty or even sixty years to appropriate the sea-shore or fishery, where the public or Crown right was scarcely worth asserting, is not suffi-

(a) Vide *R. v. Exeter*, 12 A. & E. 512; *Brune v. Thompson*, 7 Jur. 895; *Lyon v. Reed*, 8 Jur. 762.

(b) Best on Presumption, 89, 107; *Chadd v. Field*, 2 B. & B. 403.

(c) Vide *Devonshire v. Hodnett*, 1 Hud. & B. 328; *Beauman v. Kinsella*, 8 I. C. L. R. 291; *Little v. Wingfield*, do. 279; *O'Neil v. Allen*, 9 I. C. L. R. 132; *Landowner's Guide*, 279, cases cited; *Lefroy, C.J., ub. ante* 365. The whole case is rich in legal lore on these points.

cient evidence of title to either the soil under the sea or the several fishery over it (a).

X. The right of the public to navigate freely all parts of the sea and navigable waters so far as the tide flows and ebbs (b), is not capable of being abridged by any grant or charter of the Crown, or in any mode save by an Act of the Legislature. And in a modern case of great authority (c), it was held that the public right of navigation or free passage extends over every part of a navigable river, and is not limited to any particular channel or part of it (d), or state of the tide; (e) that a tidal navigable river is a highway at all times and all states of tide, and is not suspended during such periods of the tide as leave the channel too narrow to float vessels, and that the right of the Crown to the soil (or alveus, bed) of the sea and public navigable rivers is subject to the public right of passage, and any grantee of the soil must take subject to such right. In accordance with these principles it was ruled, that a vessel might continue to ascend a tidal navigable river with each successive flow of tide, remaining aground during the ebb, although by doing so she injured an oyster-bank, the private or "several fishery" of the Corporation of Colchester (f). Large and small vessels are equally entitled to use this public right; and an obstruction to small vessels is equally a nuisance as one to large (g).

(a) *Attorney-General v. Chambers*, 5 Jur., N. S., 745; *Landowner's Guide*, 304; *Chadd v. Field*, 2 B. & B., 403.

(b) Or ponds back the river—*Phear*. 41, note (h).

(c) *Mayor of Colchester v. Brooke*, 9 Jur. 1090, S. C., 7 Q. B., 339.

(d) S. C. See *Landowner's Guide*, 303.

(e) *Reg. v. Haynes*, 7 Ir. L. R. 5.

(f) *Colchester v. Brooke*, 9 Jur. 1090.

(g) *Pennefather, C. J. — Reg. v. Haynes*, 7 Ir. L. R. 5.

XI. There may exist also what is termed "a Common of Piscary," different from that public Common Law right of fishery (which often is termed common of piscary, or common of fishery), which is a right or liberty of taking fish in the pond, pool, or river of another person. This is not to be confounded with the Common Law right of fishery in tidal and navigable waters just treated of; and it can only be founded on a prescription good as against all persons (*a*). It cannot be claimed as a custom, for instance, for all the inhabitants of a parish, or for anyone who pleases (*b*), but can only be founded on a long, clear, and uninterrupted prescription by parties in respect of some estate or lands to which such an easement or profit *à prendre* (*c*) may be annexed. It is best known as the right exercised by a landlord over the rivers on his estate when he has reserved to him, his heirs and assigns, servants, &c. the right of hunting shooting, fishing, &c. (*d*) It is sufficient to notice it thus briefly in this place as opportunities will offer of adverting to it more fully afterwards.

XII. Having stated thus far the rights of fishing in navigable waters, it remains to be considered what the right of fishing is which exists in rivers and other waters not navigable. Here the rule is altogether dif-

(*a*) *Bright v. Walker*, 4 Tyr. 508; *Shelford Real P. A.* 9; *Selwyn N. P. Fishery*.

(*b*) *Bland v. Lipscombe*, 4 A. & E. 713.

(*c*) *Bland v. Lipscombe*, 4 A. & E. 713 N.; *Wickham v. Hawker*, 7 M. & W. 789.

(*d*) S. C. *Bruce v. Halliwell*, 29 L. J. E. 297, *Landowner's Guide*, 47.

ferent from that which prevails as to the sea and navigable waters, and the right of the public to common or free fishery in such waters. In the case often referred to, of the Banne fishery (a), "it was agreed that every inland river not navigable appertains to the owners of the soil where it hath its course; and if such river runneth between two manors and is the mear and boundary between them, the one moiety of the river and fishery belongeth to one lord, and the other moiety to the other (b)." Lord Mansfield clearly contrasts the law on the subject as follows (c):—"In rivers not navigable the proprietors of the land have the right of fishery on their respective sides; and it generally extends at *filum medium aquæ*. But in navigable rivers the proprietors of the land on each side have it not; the fishery is common. It is *prima facie* in the king, and is public." In strictness, neither can fish beyond the well-known though invisible boundary of their common right, the *medium fili aquæ*, but by the usual courtesy which prevails everywhere, each proprietor is allowed to fish with single rod and line so far as he can throw the latter from his own side across to the other bank, though far beyond this ideal boundary or middle of the stream. For cross fishery or netting, however, permission was generally asked, and is now required by statute (d).

(a) Davies Rep. 155; Shelford, R. P. A. 478; Selwyn N. P. Fishery; *Lamb v. Newbiggin*, 1 Car. & K. 549.

(b) So Hale, D. J. M. ch. 1. Each owner has half the soil and bed of river.

(c) *Carter v. Murcott*, 4 Bur. 2164; vid. 2 Reports Commrs. Fisheries, 1836, p. 69.

(d) Davies' R. 156. 5 & 6 Vict. c. 106, s. 70.

This distinction between the Crown and subjects' right of fishing in tidal and inland waters is clearly established and is daily recognised. The first was a royal franchise, though the public right was, before Magna Charta, capable of being excluded by clear words in a royal grant, granting this royal franchise, which is distinct and not appurtenant to the soil (*a.*) In inland waters not navigable, though the soil and bed of such waters were originally vested in the king, the fisheries were only considered as a mode of taking the profits of the soil and not as a distinct right or interest, and therefore the grant of the lands over which, or adjoining which, the rivers ran, carried with it the soil and bed of these waters and rights of fishing in them. This right constitutes also for all practical purpose a several fishery in the owners of the bank adjoining the waters (*b.*)

XIII. The right of fishing in all small fresh-water lakes or loughs is generally considered to be the same as that stated as to inland rivers. If the lake is altogether surrounded by land belonging to one person, his right of fishery is, *prima facie*, exclusive of that of all others: if by the lands of two or more proprietors, each is *prima facie* entitled to the portion of the bed and water of the lake included by ideal lines drawn from the extremities of his land and the *medium fili aquæ*, though they may often resemble the web of the geometric spider; but in practice the adjoining proprietors fish unrestrictedly with rod and line in all parts of the lake.

As to large lakes, questions may arise. The mere fact that a steamer or ferryboat may be established

(*a.*) Davies' R. 156.

(*b.*) Vid. Landowner's Guide, 299, 300.

on a lake does not seem to give to it the character of a navigable water, in which as such the public would have a common law right of fishing. Nearly every stream and lake is navigable in some part and by some craft; but that does not constitute them navigable in the sense of their being free public highways, and on which the public have a presumptive common law right, both of navigation and of fishing. Statutes have been passed declaring rivers to be publicly navigable, as those declaring the Thames from Bircot to Oxford, the Shannon from Limerick-quay to Carrick-drumrack; but these never are supposed to carry with them the public right of fishery, but leave all private rights unaffected by the provisions which made them public as highways only. Lough Erne, Lough Neagh, Lough Derg, are very considerable bodies of fresh water, much larger than the other British inland lakes. They, with some others, are navigable by very large vessels, but the public right of fishing in them may be well questioned. The usual grants in Ireland, especially under the acts of settlement and explanation, contain the general words,—“together with all loughs, lakes, rivers, fishings,” unnecessary perhaps as even without them, they would pass with the lands, and clearly exclude any right of the Crown or public to them. They constitute portions of private property accessible only from the land, and though it may be hard apparently on the public, the rules regulating the ownership rights of rivers and of fishery therein must be applied to them. Thus it is stated in Hale, D. J. M., s. 9,—“If any person, at his own charge, makes his own private stream to be passable for boats or barges,

and hereby that river which was his own in point of propriety, become now capable of carriage of vessels, yet this seems not to make it *juris publici*; unless it were done at a common charge, or by a public authority, or that by long continuance of time it hath been freely devoted to a public use." The question was lately discussed in both England and Ireland, but no authoritative decision has been made on this subject, one daily becoming of more importance, and requiring an early and solemn decision (*a*). It may be deemed absurd to apply to such bodies of water as Lough Erne or Lake Superior, or the River Amazon, a rule applicable to the Liffey or a highland tarn.

XIV. As it will be necessary to the clear understanding of the various provisions in the Fishery Laws which will pass under review, to remember the positions just stated as to the Common Law rights of fishing: they may here be briefly recapitulated:—

Right of Fishing at Common Law in the Sea and tidal navigable waters and rivers is:—

1. Presumptively in the public.
2. In private persons, excluding the public, only on the clearest proof of early grants from the Crown, or facts from which such can be fairly and honestly presumed or believed to have been made.

In fresh-water rivers and small lakes inland:—

1. Presumptively by law in owners of the adjoining banks half way across, or, as it is termed in law, *ad medium filii aquæ*.
2. This incident of property or presumption of law is

(*a*) See as to lakes *Marshall v. Ullswater*, 32 L. J., Q. B., 129.

not to be rebutted by any proof of custom, nor of a prescription not good against all parties, and indeed not easily to be rebutted, save by proof of some grant or deed by the owner of the soil or banks adjacent (a).

3. Landlords and tenants, where the lease reserves rights of fishing, &c., have "a common of piscary," or in plain English both may fish in them (b). So, if by original grant, a right of any, a moiety or other portion of a fishery is granted, a tenancy in common with the owners of the other portion will be created, and which no length of separate user will convert into an exclusive right (c).

The right of fishing in large inland lakes is the same as in inland rivers not navigable. Riparian proprietors of artificial streams may have the same rights as the owners of banks adjoining natural rivers (d).

(a) *Manall v. Fisher*, 5 C. B., N. S., 856; *Attorney-General v. Mathias*, 4 K. & J., 579.

(b) *Lamb v. Newbiggin*, 1 Car. K., 549.

(c) *Beauman v. Kinsella*, 8 Ir. C. L. R. 291; *Clarke v. Mercer*, 1 F. & F. 492.

(d) *Sutcliffe v. Booth*, 32 L. J., Q. B., 186.

CHAPTER II.

MODES OF EXERCISING RIGHTS OF FISHING AT
COMMON LAW.

I. Having thus explained briefly, but it is hoped clearly, the Common Law rights of fishing, whether existing in the Crown, the general body of its subjects, or in particular individuals, and whether in tidal or fresh waters, (a) it is next to be considered, as introductory to the subsequent statutable changes, in what modes these several rights of fishing might at Common Law have been exercised. It is clear that the *public* or common fishery in tidal waters could at Common Law, have been exercised by nets, and lines and hooks only. The attempt to place any fixed engine on the shores, the property of the Crown, or in the waters over which, as stated in the former chapter, the Crown's right of property and dominion extended, was illegal and punishable. The private right of fishing inland rivers could also be exercised legally only by nets and lines and hooks, and not by any permanent obstruction injurious to the rights of another riparian or bank proprietor, nor by poisoning. (b)

II. These were the only Common Law legal modes of capture, or enjoying the public or private rights of

(a) I shall often use, for brevity sake, the words "tidal and fresh waters," as indicating, the first, public navigable waters, the other not.

(b) *Hamilton v. Donegal*, 3 R. P. C. 268, &c.

fishing. But at a very early period after the Norman Conquest, attempts were made by the monarchs, their favourites, and grantees, to monopolize all public and private rights of fishing by using modes of capture before unknown, or denounced as illegal, such as weirs, now called "stake-weirs," and others, in tidal waters on the coast; or by erecting dams across rivers with cribs, or other similar contrivances for the capture of salmon, trout, eels, and any fish frequenting these waters. Attempts, too, seem to have been made to appropriate the fishing of inland rivers, as well as of salt waters, either in the entire or in particular portions, to the prejudice of the proprietors of the adjoining lands. This was called "defending" them. (a)

III. To check these pernicious practices in England, and to declare them, in the most solemn mode, for the future, to be illegal, was the object of two chapters, 16th and 23rd, of Magna Charta, 9 Hen. 3, and 25 Edw. 1. (b) These chapters, translated from the old Norman-French, are as follows :—

"16. No banks shall be *defended* (appropriated, or denied to the public) but such as were in defence in the time of King Henry, our grandfather, by the same places and the same bounds as they were wont to be in his time."

Chapter 23—"All weirs (*kidelli, cruives, &c.*) from henceforth shall be utterly put down by Thames and Medway, and through all England, except only by the sea-coast."

(a) Well might it be said "Defend me from my friends."

(b) Sec. 1, St. of Realm, 23-4, 116-17, and set out in *Duke of Devonshire v. Hodnett*, 1 H. B., 330, n; Hale, D. J. M., 7.

The Common Law of England and all statutes previous to 30 Hen. 3, were introduced into Ireland, if not previously, at least in that year, by the King's ordinance, (a) if indeed the Common Law was not earlier communicated to this country. Although Ireland was only gradually divided into counties, and the communication to the remaining portions of Ireland of the English laws, could only keep pace with the adoption into the united realm of the lands outside those first formed counties, the ordinance was general, (b) and there can be no question that the Common Law and early *general* statutes of England capable of being applied to Ireland, were introduced by this ordinance, as they and all subsequent laws up to the 10th Hen. 7, were again enacted and declared to be in force in Ireland by what is familiarly called Poyning's Law, 10 Hen. 7, c. 22, A.D., 1495.

IV. It is on the 16th chapter of Magna Charta, just stated, that an opinion was founded that the franchise or right of a "several fishery" in a navigable river, or in creeks, harbours, estuaries, or other waters, could not be created since Magna Charta; but as we have seen, though this opinion may be correct, it does not prevent the re-grant of such several fisheries "*riparia in defenso*" (c) as were in existence in the time of Henry the Second, whenever, by any event, they become re-vested in the Crown after their due legal crea-

(a) Sir John Davies' Rep., 101.

(b) See it in Sir John Davies' R. Case of Tan., 101. The word "union" is used in the ordinance.

(c) Perrin, J., *Malcomson v. O'Dea*, P. C., 359.

tion. (a) The prohibition in chapter 16 extends to salt and fresh water rivers, so far as the tide ebbs or flows. It is, however, the 23rd chapter of Magna Charta which is sometimes supposed to have legalized all weirs previously erected, and rendered illegal *all* weirs which might at any time afterwards be erected in any place except the sea-coast, and impliedly made any on the sea-coast legal. This opinion (b) is, however, erroneous, and founded on a misconstruction of the Common Law applicable to all weirs wherever erected, and the 23rd chapter of Magna Charta was merely in affirmation of the Common Law, and gave it a greater sanction and more solemn affirmance. At Common Law, weirs, whether upon the sea-coast, or in harbours and navigable rivers, were, if in the least degree injurious to navigation, or the common public right of fishing, deemed public nuisances, and might be prostrated as such at any time: even if they were erected in "several fisheries," they might be, nevertheless, treated as nuisances if injurious to navigation or public rights of fishing.

V. These positions are likely to be so often referred to in proceedings to enforce the recent Act, 26 & 27 Vict., c. 114, that it will be useful to state the authorities for them rather fully. In Hale, D. J. M. Har. L. T., among other passages to the same effect, it is said, (c) "The interest or right (to have weirs) must be so used as it

(a) See Perrin, J.'s, judgment, *Malcomson v. O'Dea*, Printed Case, D. P., 857, and the judgments of Hayes and O'Brien, JJ., do., and Baron Fitzgerald's, an able exposition of the law.

(b) And also on this point, Phear on Waters, 501.

(c) Page 22.

may not occasion a common annoyance to passage of ships or boats, for that is prohibited by the Common Law, and these several statutes before-mentioned"—referring to the early English Acts, which will be presently recited—"for the *jus privatum* must not prejudice the *jus publicum*, wherewith public rivers or arms of the sea are affected for public use." Glanville, the most ancient writer on our Common Law, and who lived *temp.* Hen. 2, and wrote before the passing of Magna Charta, treats weirs as a nuisance at Common Law (a) In the time of Edw. 1, they were also treated as nuisances.—Har., L. T., 20. In modern times, Pennefather, Baron (*clarum et venerabile nomen*), 8 Ir. L. R., 122, thus expresses himself—"This weir (one within 23rd sec. of 5 & 6 Vict., c. 106,) is left as it would be at Common Law, and is to be justified by the Common Law. I am bound to say that the erection of this weir is illegal at Common Law, as tending to the injury of the public right of fishing. It restricts the enjoyment of fishing by the fishermen in that part of the river." So Crampton, J., (b) "My opinion is, that a Scotch weir in a tidal river may be a nuisance to a public right of fishing. That it may be a nuisance to navigation, is not disputed. Now, the same principle seems to me to be applicable to common of fishing in a tidal river, and to common of passage by boats up and down the river. If a common of highway up and down the river be disturbed, that is a nuisance, and if a common of fishing be in the same, or obstructed, why should

(a) Lib. ix. chap. 2, cited by Hayes, J., *Malcomson v. O'Dea*, 319

(b) *Regina v. Ryan*, 8 Ir. C. L., 126.

not that also be obstructed. The injury is equally to the public in both cases, and by the same means. The difference is, that in the one the injury is to the free passage of boats for commercial and agricultural purposes; in the other, the injury is to free fishing for the support and maintenance of the Queen's subjects. Indeed, the two subjects are clearly connected, for the fishing is carried on by boats, whose course is equally obstructed as that of other boats."

In the very important case just cited, *Reg. v. Ryan*, the Court of Queen's Bench in Ireland, then presided over by Pennefather, C. J., decided that weirs in tidal rivers were illegal at Common Law, if they were injurious to navigation or to free public right of fishing; (a) and in *Reg. v. Haynes*, (b) Scotch weirs in the Bandon River were adjudged to be illegal, on an indictment at Common Law charging that they were injurious to the navigation of the river, Pennefather, C. J., saying, "here is a class of men, the owners of small boats, who are entitled to the navigation of a public river; and it is an injustice which the Court will not sanction, that because of another class of vessels being advantaged" (it was contended gravely that the weirs were useful as showing the Channel to large vessels), "that will do away with the injury to smaller vessels. Every person has a right to the King's highway, and no one can obstruct that. No person has a right to say, I will leave the public a portion of a highway, and take the rest myself." (c)

(a) So in *Reg. v. Haynes*, 7 Ir. L. R., 5.

(b) 7 Ir. L. R., 3.

(c) *Vide* Phear on Rights of Water, 47, *et seq.*

Indeed, there could be but little doubt that the modern erection of all weirs was illegal at Common Law, as being a nuisance both to the public right to navigation and free fishing in tidal waters. The Act 12 Edw. 4, c. 7, expressly terms them "*nuisances* as impediments to navigation, and *destructive of fish*, and of the fry of fish, and the authorities just now cited at length seem to have concluded those two points, that the erection of weirs in modern times (at least before 1842) was illegal at *Common Law*, if injurious or nuisances to the public right of navigation, with or in any crafts, small or large, or to the free right of fishing; and also that the owners of small boats are, if possible, more regarded by law as to the preservation of their rights of free navigation and fishing, than the possessors of large vessels. The law is pre-eminently intended to protect the poor from the aggression of the rich and powerful. The rich can put the law in force to shield themselves; the poor can only rely on the arm of Government to protect their rights. The construction of Magna Charta, chap. 23, is settled to be this, that it only recognizes the legality of all weirs previously erected under a sufficient grant from the Crown, *if not injurious* to navigation, or to the public rights of fishing, and it is under this doctrine that old *head* weirs and tide weirs, as held under patents from the Crown, or old prescription, though the patents may be modern re-grants of the Crown's ancient rights, which had become re-vested in the Crown, are deemed legal. (a)

VI. Let the reader, therefore, when considering the

(a) *Williams v. Wilcox*, 8 A. & E., 314, 334; *Hayes, J., Malcomson v. O'Dea*, P. C., 319; 8 Ir. L. R., 121, Attorney-General.

modern code of Fishery Laws relating to weirs of every kind, bear these three rules or positions carefully in mind :—

1. All weirs recently erected in tidal waters are illegal at *Common Law*, as being injurious to the public rights of navigation and free fishing.
2. That they are prohibited also by *Magna Charta*, and for the same reasons.
3. That ancient weirs held by patent or prescription, which were erected before *Magna Charta*, may be lawful if not injurious to navigation.
4. So, if such ancient weirs are held under modern re-grants of ancient lawful weirs.

CHAPTER III.

EARLY LEGISLATION CONNECTED WITH WEIRS AND FISHERIES.

I. A quaint old writer, of the 17th century tells us that "when the kings of Naples enclosed ('defended') the gardens of Onotria, where the best manna of Calabria descends, that no man might gather it without paying tribute, the manna ceased till it was taken off, when it came again, and so when after the third trial the princes found that they could not have that in proper ('*in defenso*') which God made to be common, they left it as free as God gave it. The like happened in Epire when Lysimachus laid an impost upon the Tragasean salt, it vanished, till Lysimachus left it public. And when the procurators of King Antigonus imposed a rate upon the sick people that came to Edepsum to drink the waters which were lately sprung, and were very healthful, instantly the waters dried up, and the hope of gain perished."

No such sudden miracles frustrated the equally unjust acts of our early kings, or their too powerful friends, in appropriating or "defending" the public waters and public fisheries. Much fish, and the fry and young of fish, were destroyed, and great injury was inflicted on the poorer classes, among which fishermen in all ages have ranked, and great inconvenience was felt by those navigating the sea and rivers, but the people, not tamely

submitting to injustice, first murmured loudly, and then by armed and determined resistance, made their grievances felt, and insisted on legislative remedies and redress. Magna Charta was passed within perhaps a few years of the grievance becoming alarming, when the rivers of England had, as the Shannon now, become studded with weirs. Commissions were issued to prostrate these nuisances ; (*a*) they were indicted in the Leets, Sessions of the Peace, Oyer and Terminer, or before justices of assize, and oftentimes in the King's Bench. "Sometimes they were prostrated by the parties that were prejudiced by such measures without any process of law," this being allowable. The erection of them was thus in some degree checked ; but the 12 Ed. 4, ch. 7, dealt with them in a very spirited and just manner. They were by it called and treated as common nuisances to fishing and navigation, and great powers were given to the sheriffs of counties to abate and remove them. This statute was, of course, one of those extended to Ireland by Poyning's law, and in terms, at least, has never been repealed as to its operations in this country.

II. This Act of Edw. 4, just referred to, contained, amongst its other provisions, a clause forbidding, in the most explicit manner and under severe penalties, the future erection of any weirs, or the enhancing, enlarging or adding to, or, in other words, "improving in capturing or obstructive powers" any weirs then erected. The effect and construction of this clause, of the provision against enhancing weirs, came before the Court of Queen's Bench in England in the year

(*a*) Hale, D. J. M. 9. We are returning to the wisdom of our ancestors, and issuing new commissions.

1806, when the owner of an ancient weir *improved* it by converting it from its original construction, which was a brush-wood weir (such as is well known were all the ancient fishing weirs in the Irish rivers) into a stone weir. (a) An action was brought to try the right thus to improve or enhance the weir, and Lord Ellenborough delivered the judgment of the court, then composed of most able lawyers, in the following terms: "The right set up by defendant to have a stone weir is plainly founded on encroachment. The erection of weirs across rivers was reprobated in the earliest periods of our law; they were considered as *public nuisances*. (b) The words of Magna Charta are, 'that all weirs from henceforth shall be utterly pulled down by Thames and Medway, and through all England,' and this was followed up by subsequent Acts, treating them as public nuisances, and forbidding the erecting of new ones, (c) and the enhancing ('improving') or enlarging of those which aforetime existed. I remember that the stells erected in the river Eden by Lord Lonsdale and the Corporation of Carlisle, whereby all the fish were stopped in their passage up the river were pronounced by this court to be public nuisances. (d) Now here it appears that previous to the erection of this stone weir, there had always been an escape for

(a) *Weld v. Hornby*, 7 E., 197.

(b) i.e., *nuisances* at Common Law, *vide ante* chap. 2.

(c) In the Schedule to the English Fishery Act, 24 & 25 Vict., ch. 109, seven statutes previous to the 12 Ed. 4, c. 7, on which Lord Ellenborough's judgment directly relies, will be found to the same effect.

(d) It should be remembered "public nuisances" were always Common Law nuisances.

the fish through and over the old brushwood weir, in which those on the stream had a right, and it was not competent for the defendant to debar them of it by making an impervious wall of stone, over which it is in evidence that the fish could not pass except in times of flood, and however twenty years' acquiescence may bind parties whose private rights are affected, yet the public have an interest in the suppression of public nuisances, though of longer standing." (a).

II. This decision of the highest authority, which has been frequently recognised as sound law, and never in the least degree impeached, is of great importance with regard to the weirs of all kinds in Ireland. It treats all weirs as public nuisances, which were subsequent to Magna Charta, and considered in the same light the enlarging or improving all weirs originally erected prior to that great Charter. There is then no doubt whatever that both Magna Charta, and the 12th Ed. 4, c. 7 (and earlier Acts unnecessary to refer more particularly to) on the same subject, (b) were extended to Ireland by Poyning's Act, as they were made for the wealth of the kingdom, (c) the safety of navigation, and protection of the fry of fish spawned in the waters; "and that these Acts only gave additional remedies for the abatement of public nuisances, for weirs of all

(a) *Vide ante*, p. 7, even 40 years will not do; there is no prescription against an Act of Parliament.

(b) 25 Ed., c. 24; 45 Ed. 3, c. 2; 1 Ed. 4, c. 12; 2 Hen. 6, c. 15, and others enumerated, 24 & 25 Vict., c. 109, Schedule; 10 Hen. 7, c. 22; 12 Ed. 4, c. 7, *vide* clear and important evidence of P. M'Mahon, M.P., Select Committee of Fisheries, 1849, p. 10, *et seq.*

(c) Evidence of Sir R. De Burgho, *ib.* 74; judgment of M. R. concludes this point.

kinds were considered as such by the Common Law of both kingdoms. Now it is well known that even within the memory of persons still living many of the fishing weirs in Ireland have been converted from brushwood weirs into more efficient stone weirs, that free gaps which had existed in others, were stopped; and that in all cases the weirs have been in contemplation of law and defiance of it, "enhanced." Thus the weir of Lismore was enhanced, and a free gap in it stopped. In fact it seems to have been originally composed of two weirs, one at each side of the river, with a free gap between; and that the two weirs were united and the gap closed up at the end of the last century (a). So at Ballyshannon (b); but the enlightened owner of this fishery seems to have re-opened the free gap; and he gives the utmost facility to the passage of fish, to which indeed there never appears to have been the same obstructions as at other places. So at Ballina and on the Boyne free gaps in existence within living memory were closed. It is needless to enumerate more cases; all were infringements of public right—all were public nuisances, and in direct contravention of many statutes. But the expense to private parties, and the difficulty imposed on them in asserting the law for the protection of public rights, deterred them from taking the necessary steps to remove and abate those most pernicious structures. Public and Common law nuisances they were and remain. This must be remembered in considering the series of more recent positive enactments

(a) Evidence of J. D. Croker, Esq., Report of Com., 1849, p. 36, 51, 62; Evidence of M. Fitzpatrick, ib. 51.

(b) 94.

contained in the code commencing in the year 1842, and ending in this present year, to which reference will hereafter be made. Nor could these encroachments gain validity by length of time or prescription. There can be no prescription against an Act of Parliament; no length of time will validate its violation, nor will user be a repeal of it (a).

III. It was in early times found that the capture of the young of fish before arrival at maturity, and mature fish at certain periods of the year before they deposited their spawn, was most detrimental to the public interests, and statutes were passed to prevent this practice (b). The habits of salmon and other fish must have been tolerably well observed to have led to this legislation so many hundred years since; and we have but little improved on these specimens of the "wisdom of the ancients." All these English statutes, as has been before remarked with reference to Magna Charta, and all other early Acts for the benefit of the Commonwealth, were extended to Ireland by Poyning's Law, 10, Hen. 7, c. 22.

IV. The earliest purely Irish statute on the kindred subjects of nuisances to navigation and fisheries is the 5th Ed. 4, c. 6; but as it merely referred to foreign vessels visiting the Irish coasts for the purposes of fishing, and has had no permanent effect on the subjects' Common Law right, it needs no further comment or observation. The next Irish statute, however, is of much more importance; and as its provisions seem to

(a) 3 T. R. 271; 11 East. 495; *Robson v. Do.* 3 Doug., 307.

(b) 13 Ed. st. 1, c. 47; *Maldon v. Woollet*, 12 A. & E., 18; 13 Rich. 2, st. 1, c. 19; 17 Rich. 2, c. 9.

be still in force, and certainly have not expressly been repealed, it deserves a full notice. This st. 28 Hen. 8, c. 22. Ir., 1 vol. of st. p. 161, after reciting the great injury done to the navigation or traffic of boats, cotters, wherries, and other vessels on the royal (a) rivers, Barrow, Nore, Suir, and those to and from Waterford, Kilkenny, Ross, Clonmel, and other places in the counties of Kildare, Catherlogh, (Carlow) Wexford, Kilkenny, Waterford, and Tipperary, by the erection of weirs and other obstacles, and through which the salmon fry were destroyed, enacts that it shall be lawful for any person, with the aid of the sheriff of the county, to prostrate all such weirs, and to make a convenient gap through every mill-pond; it also imposes heavy penalties on persons resisting this summary process of removing obstructions to navigation. The Act, "so far as relates to destroying salmon fry," is repealed by the 5 & 6 Vict. c. 106, the first of the present modern code of Irish fishery laws; but there is not the least reason to doubt that it is in full force in all other respects. Indeed, as to the abatement of those public nuisances in the various navigable waters enumerated, it only confirms and strengthens the Common Law, which permits everyone interested in the matter, and particularly required all justices and sheriffs, summarily, and of their own motion, without tedious formal process and authority from courts of law, to abate all nuisances prejudicial to the public interests, especially those so highly favoured as the interests of navigation, commerce, and fishing. Under this Act rights are enjoyed

(a) Note those navigable rivers were termed *royal* in the Act, confirming Sir John Davies' view.

to the present hour of towage on the banks of the rivers referred to in it; and there seems, therefore, no reason to doubt that the opinion attributed to Mr. M'Mahon, M.P., that this statute is still law and may at any time be enforced, is correct. Indeed it is strengthened by the Act 5 G. 2. c. 11, Ir. which, after reciting the Act of Hen. 8, imposes very heavy penalties—£50 for the first offence, £100 for the second, on the re-erection of any weirs prostrated under the authority of the Act of Henry the 8th, just recited. The Act 5 G, 2, c. 11, is only repealed (a), as to the third section, which relates to "fishermen or apprentices fishing in navigable waters." There was no provision in the Act of Henry 8, relating to the destruction of salmon fry. It only recited *the fact* of the destruction to salmon fry caused by the erection of weirs, &c.; and the repeal of the Act as to this recital seems a mere absurdity; the fact was and is true, and remains unaltered. The conclusion, therefore, seems clear that both statutes are in full force as to the rivers and six counties named in them.

V. In the reign of Charles I.(b) two important statutes were passed. Some provisions analogous to those, in the first of which, 10 C. 1, sess. 9, c. 24, are preserved in the modern code, the second of which, 10 Ch. 1, sess. 3, c. 14, requires full consideration, as it still materially influences rights which may be claimed, of fishing by weirs, &c., at least in estuaries and rivers. By 10 Ch. 1, sess. 2, c. 24, a right was given to all those fishing for herrings, pilchards, and to their watchers, &c., to enter on lands adjoining the sea-coast and fish-

(a) 5 & 6 Vict. c. 106.

(b) Passing by an Act, 11 Eliz. c. 4, now repealed for the preservation of salmon and eel fry.

ing places to watch for the fish and draw their nets on shore, &c. (a) The 2nd Act. 10 Ch. 1, sess. 3, c. 14, recites in the quaint language of that time, but which might be thought not inappropriate to similar practices at the present time, that "great hurt and daily inconvenience have and doe ensue unto all the king's subjects of this realm by the *greedy appetites and insatiate desire* which sundry of them occupying fishings have used by taking and killing the young spawne, fry, or breed of eeles and salmon as well in *salt* (b) rivers as in fresh rivers, loghes, plashes, fennes, and marshes in many parts of this realme, as also by setting of stop-nets, still nets or standing nets fixed upon posts or otherwise in the rivers where the salmon should pass up from the sea, to the great hindrance and prejudice of the commonwealthe of this realme." It then provides against killing the fry of eels or young of salmon at the tails of mills or weirs in any rivers or waters in Ireland, salt or fresh, and against catching salmon in any straits, rivers, or brooks, salt or fresh, or indeed at all, by any stop nets, still nets, or standing nets, and imposes on persons offending against its provisions a penalty of 40s. and forfeiture of the unlawful nets, engines, and devices whatever they may be, used contrary to this Act.

This statute had for a long time a considerable effect in checking the erection in all waters of any *fixed engines*. It was general, and applied to all straits and rivers, salt or fresh. While the Act of Henry 8 embraced

(a) See 5 & 6 Vic. c. 106, secs. 3 and 4, substituted and fuller provisions on the same subject.

(b) "Rivers" extend in law from source to entrance into open sea.

certain waters only, the Common Law received additional sanction from the penalties given by the Act of Charles ; but the "greedy appetites and insatiable desires" of those desirous to monopolize all fish to the injury of the commonwealth were not easily restrained ; and at the beginning of this century "Scotch weirs" or "stake weirs" and bag nets were introduced, which it was hoped, might be deemed not to come within the prohibitory language of the Act, as they certainly were inventions and engines devised subsequently. However, shortly after their introduction an action was brought against their enterprising inventor, or benefactor to this country, by a wealthy proprietor on the river where these engines were first established ; and these Scotch weirs, then composed partly of hemp netting were held to be within the prohibition of the Act 10 Ch. 1, sess 3, c. 14 (a). This however, did not check the spirit of enterprise termed by the Legislature in ancient times, "greedy appetites and insatiable desires ;" and Scotch weirs were erected in the lower Blackwater before the year 1838 by the then proprietor of the lands of Ballinatray, adjoining the river. The Duke of Devonshire at once commenced an action against this gentleman. The Duke's weir at Lismore was indeed closed against the public interested in the upper waters as illegally as the Scotch weirs were erected on the lower or tidal waters ; but no individual as powerful or wealthy was found to question this obstruction. At the trial of the action (b) it was proved that Scotch weirs were introduced into Ireland about

(a) *M'Adam v Halliday*, Al. & N. 44 N.

(b) See *Alcock and Napier*, 442. A.D. 1838.

nineteen years before (they were, however, known in 1809) (a); that they were permanently fixed save at the prohibited times, and were capable of catching fish night and day; and that since their introduction salmon had decreased in proportion to the number of those erections. The Court of Queen's Bench in Ireland unanimously held them to be illegal, and within the prohibitory words and spirit of the statute of 10 Ch. 1, s. 3, c. 14. In a case a very few years later, and just before the passing of the 5 & 6 Vict. c. 106, in the year 1841, all such weirs and any similar devices or varieties of fixed nets, whether made of fibres or with wood or iron, in fact all *fixed* engines were clearly and unanimously held by the Court of Exchequer to be illegal and within the intention and prohibitory language of the same statute. (b) Brady, C.B., saying (c) "It would be putting an idle construction on this statute to hold that it is restricted to nets of any particular construction, for so it would be easy the day after the Act passed to nullify its operation. Looking to the preamble and the evils it was intended to remedy, I am of opinion, and so are my brethren, that this is an erection fairly within the meaning of the Act."

Lefroy, B., now C. J., (d) said these erections were within both the spirit and letter of the Act. All fixed engines were thus in the year 1841 clearly unlawful, both by Common law and by statutes.

VI. Some few of the many Acts passed by the Legislature relating to our subject remain to be briefly

(a) See *M'Adam v. Halliday*, the introduction, AL & N., 44 N.

(b) *Frewen v. Orr*, Long. & T. 601.

(c) p. 620.

(d) p. 622.

noticed. They were in all, in the year 1842, twenty-six in number, and contained provisions against poisoning rivers, destroying the young fish, catching salmon at unseasonable times, using certain destructive engines, such as spears, &c., lights at night, having spur walls to mills (device for a fishing-weir,) of a greater length than twenty feet; and also provisions for enforcing free gaps or openings in weirs on rivers, and observing annual and weekly close seasons, for the improvement of the sea fisheries (a); and in many of them very prudent and stringent clauses were inserted which showed the desire of our legislators to secure the public interests from the injurious evasion of the laws by offenders, and the apathy or connivance of those who were charged with the execution of them. Their well-intended labours were attended with a brief success; the rich and powerful first violated them, the poor followed in a more humble way; and the result was, that long before the year 1842 the Irish fisheries of all kinds, sea and inland, had declined so much as to arouse everyone to the necessity of taking some steps for their restoration, or their speedy extinction was sure to take place at no distant period.

(a) Vide Acts enumerated in clause 1, 5 & 6 Vict. c. 106; and Summary given in 2nd Report, 1836, p. 69, &c.

CHAPTER IV.

CODE OF FISHERY ACTS, A. D. 1842 to 1863.

JULY 28.

I. From the preceding summary of the statutes which regulated the Irish Fisheries on the sea and inland waters before 1842, it will be seen that they were even at the earliest times framed on the fairest and most enlightened principles, of securing equally to the public the fullest benefit from the bounty of Providence, which has appointed the waters to bring forth fish abundantly, and to be fruitful and multiply, without taxing the care or labour of man to promote their increase. Fish merely required protection while spawning, and for the young ere its arrival at maturity, in order to provide food and employment for tens of thousands of hardy fishermen on the coasts and inland. Spared from wholesale and wanton destruction, and the unjust monopoly by individuals, that abundance would have continued to be enjoyed, which nature had originally provided and intended should be equitably distributed to all.

The habits of the various kinds of fish—eels, salmon, trout; and of the shell-fish, oysters, &c.—seem to have been well ascertained by our forefathers, and the close yearly seasons for the chief rivers in Ireland had been fixed with some discretion and judgment; but all was of no avail. The enquiries of the Commissions of 1836 elicited ample reasons for the great falling off in

the productiveness of the Irish Fisheries, which had then excited alarm, and it was desirable to arrest. A few extracts from the evidence given before the Commissioners, and the truth of which the good sense and experience of every disinterested person will at once acknowledge, will be sufficient to show the chief causes of this great decline, and to contrast the liberal and enlightened teaching of ancient legislation with the spirit of the recent and most injurious code of fishing laws. The following extracts are from the 2nd Report of the Commissioners:—

“The salmon-fishing has diminished amazingly in this part of the Shannon owing, in a great degree, to the vast number of Scotch, slob or stake weirs erected, which are increasing every season, and also to the want of having the salmon fishery protected. It commenced decreasing about fifteen or twenty years since, at which time the slob-weirs commenced ; and it has continued to *decrease* according as they *increase* (a).”

“Owing in the greatest degree to the vast number of these illegal Scotch, slob or stake weirs which have been erected on the river Shannon, and are increasing every season ; also to the want of a requisite protection to the salmon fisheries, the fishery appears on the decrease. For the last twenty years it has retrograded ; it has retrograded in proportion as these obstructions increase (b).”

(a) Mr. Gibson, Mayor of Limerick, p. 49. The maxim, *ex uno disce omnes* applies to these extracts as to the Shannon; that which injured such a noble river could not have served others.

(b) Mr. Roche, M.P., now Sir David Roche, p. 49, of course stake weir owners did not think any injury whatever arose from their use. The public have made up their minds on this point.

“On the river Shannon the salmon-fishing has decreased considerably since the introduction of the slob or stake weirs, which is not to be wondered at as the number of weirs put down each season has been from 70 to 100 on each side of the river from Kilrush up to within about eight or ten miles of Limerick (a). Salmon previous to the introduction of stake weirs was sold from 2½d. to 4d. per lb., which was considered dear; it now sells from 1s. to 1s. 4d. in the spring of the year (b).”

By other witnesses than those whose evidence has been just referred to, the decrease in the salmon fishery was attributed, in a greater or less degree, to the destruction of the fry and brood fish by poaching, poisoning, &c., as well as to the use of illegal stake weirs and traps at mill-dams, &c.; to the vast number of obstructions on the rivers, to the want of observance of the close times, and to the general non-execution of the laws for the protection of the Fisheries.

II. As to the laws, also, there was some apparent, but only an apparent or seeming contrariety of opinion among the most intelligent witnesses. By some they were considered insufficient and difficult of enforcement; and one gentleman with the straightforward bluntness generally considered as characteristic of the gallant profession to which he belonged, said that the laws were too numerous, partial, expensive,

(a) Mr. Percy, 50.

(b) Same witness, and many others to the same effect as to Scotch weirs in all rivers..

(c) Pages 7, 9, 18, 20, 22, &c. The reports are very interesting and instructive, but the author forbears making too numerous extracts.

and complicated to be effective or beneficial to the public. They are well adapted to *protect monopolies* when administered by interested magistrates and their friends (a). By others the laws were considered sufficient if properly administered; but all concurred in stating that whether the laws were sufficient, or the contrary, they were not enforced (b). This defective enforcement of the laws—indeed it might be said that they were not administered at all—seems also to have resulted from many different causes; the want of government supervision to see that they were carried into effect; their number and intricacies; the difficulty of getting warrants executed—the police being prevented from interfering; the expense of enforcing them, and the want of harmony and unanimity among the magistrates (c). It was said that as there were so many different Acts the magistrates construed them different ways *as suited their opinions and their interests*, and thus the laws were rendered quite nugatory, each person being allowed to make what he could of the fish, and do what he liked with his own (d); and that the laws were in fact enforced only against the poor (e). Everyone did what was right in his own eyes, “might was right;” and every mode unfair and unlawful was resorted to for destroying the fish (f). The result of all these concurring causes, which need scarcely be told,

(a) 32, 16, 12, 47, 34, and other places.

(b) 32, 43, 55, 16, 19, and other places.

(c) Vide 2nd Report, 66, 67, 84, &c., and other parts. The 2nd Report contains a convenient summary of the evidence.

(d) 166, 60, 54.

(e) 154 & 66.

(f) 164, 63, 62.

was the almost total destruction of the inland fishery of Ireland, and to this result all classes of society may be said to have contributed; weir proprietors, fixed engine offenders, mill-owners, poachers, justices, and high and low, rich and poor. But the low and the poor were the minor offenders and heaviest sufferers, both at the time and in the subsequent legislation.

III. The sea fisheries had also declined. The causes of this were not so obvious, and depended little on the laws, their violation, or observance (a). Disturbance of the spawning beds by trawl and trammel nets; the want of skill and capital to pursue this branch of industry successfully, or to compete with the Cornish fishermen; the improvement in agriculture making it more remunerative than before the suppression of bounties; the addiction to ardent spirits, and violent combinations, are all referred to as contributing to produce the unfortunate decline of the coast fisheries; to which also might have been added the fact that the estuary fisheries for salmon had, by the means of fixed engines, fallen into the hands of landmen and not of fishermen, and thus materially diminished the profits of the latter class, and, of course, the inducements to adopt fishing as a means of livelihood.

IV. Such, then, as has been represented by the few extracts from the evidence taken in 1836, or rather in a worse state, was the condition of the Irish fisheries in the year 1842, when the 5th and 6th Vict. c. 106, the

(a) 1st Report, VI. et seq. contains much valuable information on the sea fisheries of Ireland, their early history, prosperity, and decline.

first and principal statute in the present code of fishery Acts, was passed.

V. It cannot, indeed, be denied that the old laws required to be consolidated, simplified, and improved; and that a system of government central and local, efficient supervision and enforcement of the law, was much wanted; but there was no reliable evidence, no authoritative report, that these improvements should be accompanied by a total departure, nay, a reversal of the spirit of legislation, which had for six centuries pervaded the laws, condemning fishery monopolies, and providing for the equal distribution of nature's bounteous stores to all.

VI. In the year 1842, then, a bill which subsequently was converted into the Act of the 5 & 6 Vict. c. 106, was introduced into the House of Commons by Lord Eliot. It was referred to a very numerous and talented select committee, composed, however, almost without exception of Irish members of Parliament, many of them with strong prejudice from personal interests or for friendship's sake, in favour of an alteration of the law, as it then stood, regulating the use of Scotch weirs and all other fixed engines in tidal waters. No evidence was taken by them, and there was no report before them recommending such an alteration as they ventured on. Many clauses intended for the protection of the public, it is stated (a), were altered or struck out at the instance of private parties, mill and weir-owners. The feelings of the Committee, not from corrupt motives, but from habits, influences, interests,

(a) Vide Sir R. De Burgho's Evidence, 116.

and friendship, were all in favour of legalising Scotch and stake weirs; and the results of their protracted private labours are embodied in this statute, which, it may be remarked, afterwards passed through the Committee of the House of Commons, without discussion of any kind, in a few minutes in one sitting late at night, and with a rapidity which, the author has been informed, excited the greatest surprise among many English members.

VII. The provisions of the Act shall be briefly glanced at before considering fully and in detail the most important clauses therein relating to Scotch and stake weirs, bag nets, and fixed engines, which, as altered and improved, or for the future nullified by the several subsequent statutes contained in the appendix, and chiefly by the Act 26 & 27 Vict. c. 114, will demand a more extended and minute examination. It commences by a repeal of all "the enumerated Irish Acts of Parliament, twenty-six in number, and all other enactments whatever then in force in Ireland relating to the fisheries, but so far only as they or any of them related to the fisheries (a). Repealing Acts so numerous as the Irish Fishery Acts, in order to consolidate and improve them, was of course judicious; but in the subsequent clauses there was a direct antagonism with the liberal and enlightened spirit of ancient legislation, and, it may be added, with the same spirit revived within the last five years, and now admitted to be most beneficial to the Commonwealth. This departure has been characterised, not inappropriately by a quotation from

(a) Recital sec. 1, and conclusion of same section.

a truly English writer, (a) "Rich weir owner cries, 'You slander *the helms of the state*.' *Poor Fisherman*,— 'They never cared for us yet; repeal daily every wholesome act established against the rich, and provide more piercing statutes daily to chain up and restrain the poor.'" Such indeed seems to have been the effect of thus repealing some of the Irish Fishery Acts; e.g. that of Charles I., &c. without corresponding re-enactments, containing improved provisions in the same spirit and for similar objects.

VIII. By the 2nd section the Commissioners of Public Works in Ireland were appointed Commissioners for the purposes of this Act, with power to nominate deputies under them.

The annual and weekly close seasons, the modes of capture of salmon, trout, eels, and oysters, provisions (which proved utterly worthless) for making free gaps in all fishing weirs now known as stone weirs across rivers, on payment of compensation to the proprietors, limited powers conferred on the Commissioners of facilitating the passage of fish up mill-dams and other obstructions, netting, rod-fishing, poisoning rivers, using spears, lights, and other destructive implements, the powers of water-bailiffs, coast-guards, bye-laws by the Commissioners, prosecution for offences, jurisdiction of justices, penalties, convictions, evidence, limitations of actions, definitions of terms, &c., were, with others, the subject of the 3rd and the following sections in an Act, containing altogether 115 clauses. The clauses relating to each subject are

(a) Shakespere, *Coriolanus*, act 1, scene 1, quoted by Mr. M'Mahon, House of Commons, 1862.

not always in consecutive order, nor in order of their importance. The liberty, therefore, will be taken in discussing the entire code of our Irish Fishery Laws, the rights founded, claimed or derived from them, and the different portions of the many subjects regulated by them, to commence with the most important provisions, those which involved a departure from the ancient Acts, the subject of Stake, Scotch weirs and bag-nets, &c., and all devices too well known to the general public by their very destructive operation, and termed "fixed engines." The present state of the law on this head is reserved for the next chapter. The other portions of the now complicated subject of our fishery laws regulated by this Act, the system of licences and conservators introduced by the subsequent statutes, and the design and effect of the latest and most important statute in the series, the Act of the present year, will also receive a separate notice proportioned to their relative importance or as required from their complexity.

CHAPTER V.

LAWS OF STAKE WEIRS AND OTHER FIXED ENGINES
UNDER FISHERY CODE FROM 1842 TO 1863.

JULY 28.

I. It has been already stated that at Common Law the erection of any weirs at all similar to those known now as stake weirs or of fixed fishing engines of any construction was illegal, and this whether they were erected on the sea-shore or in estuaries, or other salt or fresh water navigable rivers. The owner of a "several fishery" on such waters, even if he was the owner of the soil under them; and the presumption of law was that the ownership of the "several fishery" included that of the soil (*a*), was not more privileged than any other person to erect such engines. The proprietors of the land adjoining the sea-shore had not as such the least exclusive right to the shore of the sea or of navigable water; and even if the shore and soil of estuaries, or of the sea-coast, was vested in any individual under an ancient grant from the Crown, yet he could not erect on that which thereby became his property any such engine as stake weirs. It was also stated that "several fisheries," though happily rare in

(*a*) See *Holford v. Bailey*, 13 Q. B., R. 426; *Marshall v. Ullswater Co.*, 82 L. J. Q. B., 189. The possession of the soil is unnecessary in Ireland, the definition of a *several* fishery being an *exclusive* fishery, sec. 1 of 13 & 14 Vict. ch. 88.

navigable waters in Ireland, could have been granted by the Crown prior to Magna Charta, or re-granted after it, if they had become re-vested in the Crown by forfeiture or otherwise (a). The proof required of the right to a "several fishery" in such localities as sea-shores and estuaries, was always the most strict and rigid, without which the public presumptive common right of fishing could not be ousted (b). All these engines were illegal at Common Law wherever placed; and being notoriously injurious to navigation and to the public common of fishing, were deemed public nuisances, and as such might have been abated and destroyed by anyone interested either as sailor or fisherman in their removal (c). The right of the public to navigate the waters even in private or "several fisheries" could not by any grant of the Crown have been ousted, as the public right of navigation was superior to the Crown's right to grant a several fishery, and could not have been prejudiced by the royal grant, and the erection of weirs, or enhancing or improving them, was still a nuisance and abateable by anyone (d). Some persons were indeed particularly charged with the duty of removing these nuisances; the Crown by its great

(a) See *Malcomson v. O'Dea*, House of Lords, 1863; *Little v. Wingfield*, 8 Ir. C. L. 279; *Beauman v. Kinsella*, do. 291.

(b) *Carter v. Murcott*, 4 Bur. 2162, and the authorities cited in *Malcomson v. O'Dea*, House of Lords.

(c) The erection of a weir was deemed *ipso facto* a nuisance, and needed no proof positive of its being so to entitle anyone to abate it—Hale, D. J. M., 35.

(d) Sufficient authorities for each of these propositions have already been quoted. See, in addition, Hale, D. J. M., 85 et. seq. Bracton cited, 83.

officers, the Admiralty, sheriffs, and justices; but any one whatever might abate them as public nuisances to the Common Law right of fishing where such a right was at all injured by their existence, or if they were in the least degree injurious to navigation. The inconvenience to small vessels was regarded fully as much or rather more than that to large, as those erections were really more injurious to small craft, such as boats, &c., than to large sailing vessels requiring a greater depth of water than that where weirs were placed.

It was laid down by the highest authority that "any man may justify the removal of a common nuisance (and this was written with reference to weirs called in this very passage common nuisances), either at land or by water, because every man is concerned in it (a).

II. It may be recollected also that the Common Law doctrine that such erections were nuisances, and to be removed and prostrated by any one, was declared and fortified by a series of statutes extending over a period of 600 years; that as to weirs in some rivers, the Suir, Nore, Barrow, special provisions for their abatement, was made by statutes still unrepealed; and that as to estuaries, or straits, and rivers fresh or salt, their clear illegality, under the Act of 10 Car. 1, had been pronounced by a series of decisions, the last of which was given in the year 1841.

III. In defiance, however, of both the Common and Statute Law, weirs were erected in the principal estuaries of rivers in Ireland, the Shannon, Suir, Nore,

(a) Hale, D. J. M. 878. *Mayor of Colchester v Brooks*, 7 A. & E. 377, does not conflict with this, though sometimes cited for that purpose.

Bandon, and many others, by wealthy individuals who had properties adjoining the shores, who sometimes, though rarely indeed, had a valid title to the shore, but who more frequently, however, had no title whatever beyond that of any other person. Many of those violators of the Common and Statute Law were influential supporters of the Government, friends of neighbouring magistrates, and strenuous upholders of "law and order" in their own interests, or that of their friends. No attempts, therefore, were made by Government to check their encroachments on the public rights; the law officers were passive, the Admiralty dormant, and private individuals possessed of sufficient wealth or public spirit, were not found to encounter the expense and annoyance of prosecuting in the name of the Crown the parties infringing the public rights, and committing grievous injustice to the poor by the erection of these fixed engines.

IV. As a natural result of such apathy or connivance on the part of the governors, the governed body, the public, at times took the law into their own hands, and occasionally perhaps rather roughly prostrated those engines. They did not do so without much provocation. "It required exceeding abuses to rouse the people to use the strong arm," (a) and to exert their undoubted Common Law right of prostrating those nuisances; but these acts led to riots not unfrequently, which sometimes were attended with loss of life. This legal, but rough remedy of an oppressed peo-

(a) Sir R. De Burgho, Report of Evidence before Commissioners, 1849, page 69. This Report will be referred to afterwards shortly as Report of 1849

ple, was, of course, denounced by the weir owners, the disinterested supporters of peace and good-will ; (a) it was said, too, that stake weirs were "productive engines," which in some respects they indeed were, and also that every encouragement should be afforded, on truly philosophical and mercantile economic principles, to the capture of salmon in the tidal waters, as they were readily caught there, and were in better season, and of richer flavour, than those caught in the upper or the fresh portions of rivers.

Those arguments prevailed, as they were likely to do, with a Legislature numbering among its members many men who themselves were at the time, or were shortly afterwards, to become owners of these engines, and hence the stake and fixed net legislation in the Act of 1842. Hence the legislation in section 18, and several subsequent sections.

V. Section 18 is the first of the clauses on the subject of stake weirs, and bag nets, (b) and that is, of

(a) That the quiet and canny Scotch, the inventors of these engines, were not inclined to suffer tamely their erection, will be seen in a note to "Redgauntlet," chap. iv., page 311, Cadell's Edition, 1839, which gives an account of the attack on Sir James Graham's new weir in the Esk ; and that that high-minded man, Sir Walter Scott, did not condemn this spirited mode of redressing public wrongs, is amusingly apparent from chapter v., vol. 2, pp. 95-6—"I think you must have heard that the fishermen at Brokenbone, and higher up the Solway, have made a raid upon Quaker Geddes' stake nets, and levelled all with the sands. In troth I heard it, provost, and I was glad to hear the scoundrels had so much pluck left as to right themselves against a fashion, which would make the upper heritors a sort of clocking hens to hatch the fish, that folk below them were to catch and eat."

(b) The terms by which the ordinary fixed engines are best known.

course, to be first considered. That section, reciting that doubts existed as to the right to erect fixed nets (*a*) in the sea and tideways along the coast of Ireland, and that it was necessary to declare the right, proceeds to enact, "that it should be lawful for any person *legally* possessed of a several fishery in or along any estuary or part of the sea-coast in Ireland to fix, or erect, or empower any lessee to erect fixed nets for the capture of salmon, within the limits and bounds of the fishery, subject, however to the general provisions of the Act, and to such regulations and restrictions as the Commissioners, under the powers given to them, might make, and saving to the Queen and all her people the free and full exercise of all their right of fishing, and all other rights whatever."

This was a new mode of *declaring* law, directly repealing all the statutes under which it was most clear, and only so recently in the year before had been adjudged, (not for the first time) that the erection of these fixed engines were illegal by statute, as they also were, *and still it seems continue to be*, illegal at Common Law, despite this 18th section.

Section 18, however, affected only to confer rights on the owners of legal "several fisheries." Of these there were few, and the mischievous tendency of this section, controlled as it is by the other provisions of the Act, and especially by sections 22, 23, and 24, the effect and construction of which have been the subject of judicial decision, to be presently noticed, would have been comparatively trifling. It left the public rights

(*a*) The enumeration is particular; "fixed nets" are defined by the Acts 13 & 14 Vict. c. 88, and recent Act, 26 & 27 Vict. c. 114.

of fishing, and all other rights, unaffected, and this, too, is most important to be borne in mind, as it will hereafter be seen that wherever those public rights, whether of fishing or of navigation, are injured by their erection, fixed nets are illegal, and derive no protection from this statute.

VI. The 19th section is of a much wider and more extensive application, and it is under the pretext of the rights conferred by this section, that the grievous encroachments on public rights, and the deterioration of the Irish Salmon Fisheries, have been effected.

That section enacts that it shall be lawful for any person who shall *hold and occupy* as tenant in fee, or in tail, or for life, (a) or as tenant under any lease for a life or lives, or for a term of years, whereof fourteen, at least, shall be unexpired at the time of the first erecting of such net, *any land adjoining the sea-shore, or any estuary*, "not being within the limits of any such "several fishery," (b) to erect any fixed net attached to that part of the shore adjoining such land, subject, however, to the other provisions of the Act, and to such regulations and restrictions as should be made by the Commissioners. Then follows the important proviso, "that no tenant under any lease for a life or lives determinable, or for years, of which less than 100 shall be unexpired, should erect such fixed nets without the *previous* consent in writing of the *chief landlord* or lessor seised of any rent and reversion in such land." It provided, too, as did also section 18, that no right to the sea-

(a) Tenant in tail, or for life, under will or deed, not *lease*. Lessees are afterwards provided for.

(b) Referring to section 18

shore was to be acquired under its operation, and it saved, in the largest way, to the Queen and all her subjects the free enjoyment of their rights of fishing, and other rights, in or along the said sea, or coast, or estuary.

Even the most cursory reading of this section will at once show that, to enable any one to claim a right under it, whatever was the extent of that right to such fixed net, he should—

1. *Hold and occupy* lands adjoining the sea-shore.

2. He should have some interest greater than that of a tenant for fourteen years—for example, for a life, or for fifteen years—at the time of the first erecting the net.

3. If the party holding or occupying the lands was a tenant for a life or lives determinable, or for years, of which less than 100 were unexpired, (a) he was not entitled to erect such net without the *previous* consent of the *chief* landlord, *i.e.*, head landlord, or lessor seised of any rent or reversion in the land.

4. No tenant from year to year, and no lessee holding for a term less than fourteen years unexpired, could therefore be *at all* authorised *by any one*, chief landlord or not, to erect a fixed net under this section. If he does not hold for a greater interest than that referred to (3.), the head landlord's *previous* consent in writing is necessary; without it, the erection is palpably illegal, and a subsequent assent is insufficient to legalize

(a. It does not say *when*, but it would seem it meant unexpired at the first erecting of the net. This seems the clear meaning of the provision.

it. (a) The land and weir should be held and occupied by the same *person* and in the same right.

VII. Those two sections were controlled in their operation by the 22nd, 23rd, and 24th, as well as by the sections relating to the size of the meshes, or intervals between the stakes; by section 26, restricting the extent to which the fixed engines might be placed in the tideways; and by a most important section, the 21st; but the consideration of the 22nd, 23rd, and 24th sections, more naturally follows the 19th than the 20th, which is next in order in the statute itself.

The 22nd section provides that wherever the breadth of the channel, in any estuary, or the mouth or tidal part of any river at low water of spring tides, is less than three-fourths of a mile, it shall not be lawful for *any one* (except as the proprietor of a several fishery in the *whole of such estuary and river*) (b) to erect any fixed net or similar contrivance; and that where the breadth of the mouth or entrance into the sea, of any river, the inland portion of which is frequented by salmon, is less than half a mile at low water, it shall not be lawful for anyone except the proprietor of a several fishery within its limits (c) to place any such fixed net within one mile coastward or inwards from the mouth or entrance of the river into the sea, such mouth or

(a) The words requiring the *previous* consent seem so plain, as not to admit the least doubt. The point was raised in *Templemore v. Allen*, 8 Ir. L. R., 199, and it was clearly held that the *previous* consent should be *directly* proved, and a letter without date was not evidence of it.

(b) There may be one or two such in all Ireland. The exception is therefore inoperative, and gives no right.

(c) *i.e.*, limits of the several fishery.

entrance being fixed for such purpose by the Commissioners. Any offence against this section is to be visited with a pecuniary penalty not exceeding £30; the offender is also to forfeit the weir or net, and the nuisance may be pulled down or destroyed by order of the justices at the expense of the offender.

The 23rd and 24th sections constituted a sort of statute of limitations to offences committed before the Act passed against the provisions of section 22, which made it clearly illegal for any one, save the owner of a several fishery, and within its limits, to erect a fixed engine in any estuary or tidal part of a river where the channel was at low water of spring tide less than three-quarters of a mile wide; but the wording of each of these sections was peculiar, and their effect not less so. Sec. 23 enacts that nothing therein contained, referring to sec. 22, shall be construed to render illegal any fixed nets established (*a*) for twenty years or upwards in any such narrow estuary; and provided that nothing therein contained as to such period of twenty years shall be construed to *increase*, or *lessen*, or affect the title of any party claiming to maintain such weir, or any party disputing such title; but all parties should be entitled to their respective rights as if the Act, save so far as it repealed other Acts applicable to weirs, had not passed.

The 24th section contained a nearly similar provision, that nothing in the Act should be deemed to render illegal any fixed engines erected for ten years be-

(*a*) If the weir was not *continuously* up for the twenty years, it could not even pretend to claim the benefit of this saving. See *Reg. v. Ryan*, 8 Ir. L. R., 126; but if *established* is yet illegal.— p. 61.

fore the passing of the Act, by the owner of a legal several fishery in such narrow channels within the limits of such several fishery where the bounds or limits are accurately defined.

There was also a saving for old legal *head-weirs* not fished by a *fixed* net—section 25. All those fixed engines were subject to the restrictions contained in sec. 20 as to the size of the meshes of the nets and the intervals between the bars of the stake-weirs and to those contained in sec. 26, which limited the length to which stake weirs and any work connected therewith to low water of spring tides (*a*), and also regulated the construction of stake-weirs and other fixed engines.

The 21st section provided that no fixed engine of any kind should in any case be placed or erected in such a manner as to be injurious to navigation, and gave very summary and extensive powers to the Commissioners to inquire as to all such erections, and to order their prostration at the expense of the party erecting such weir. It also imposed heavy penalties on anyone “again creating the *like nuisance*,” and fixed the maximum at £50, and minimum at £30. This section, which manifestly controls the 19th, 22nd, and other sections, relating to fixed engines, and should in order have followed them. The same section also provides that nothing therein (*b*) contained shall be taken to affect or abridge the powers of the High Court of Admiralty or any other jurisdiction in relation to the erection of such weirs, fixed nets, or contrivances—a pro-

(*a*) Low water of spring-tides throughout the code—26 & 27 Vic. c. 114, s. 19, means ordinary spring-tides.

(*b*) *i.e.*, in the entire Act, not in the section merely.

viso of great importance, which affords a guide to the construction of all those sections, and to subsequent decisions and legislation.

VIII. The first question which naturally occurs is, what in plain and untechnical language was the effect of those sections. Did they legalize every fixed engine erected by parties possessed of a "several fishery" under colour of section 18, or by parties being occupants of land and next the sea-shore, having therein the estates in fee tail or life, or for the large leasehold interests under sec. 19? Do they legalise weirs established by anyone more than twenty years, or weirs established more than ten years by the owner of a several fishery in narrow tide ways under ss. 23 and 24? for it is manifest that it is under the operation of these sections chiefly and primarily, viz., 18, 19, 23, and 24, that the legality, *under this Act*, of all fixed engines, supposing that they in all other respects—such, for instance, as the size of the meshes, extreme length—conform to the requirements of the fishery code, is to be decided. The subsequent Acts, 8 & 9 Vict. c. 108, secs. 2 to 7, and the 13 & 14 Vic. c. 88, sections 14 to 20 do not alter the construction of these clauses of the 5 and 6 Vict. c. 106. Those statutes provide means for the machinery to be put in force by the Commissioners for removal of all weirs erected contrary to the earlier statute, and do not at all alter its construction.

What, then, is the effect of the several sections of the statute 5 & 6 Vict. which have been just stated, and which are the only sections under colour of which the erection of weirs, stake, and bag-nets, and all other fixed engines, could be by anyone alleged to

be legal? Simply this, to make any weirs and nets erected after the Act by such persons only (a) as have the *necessary lawful estates* referred to in secs. 18 and 19, and with the requisite previous consents specified in the latter section, legal, if they are not in any respect nor in *any degree* injurious or detrimental to the public right of free navigation or fishing; to which it may be added that secs. 23 & 24 give no protection whatever to weirs erected or established for ten or twenty years in the narrow estuaries referred to in them; *all such are illegal*. This may seem to many a somewhat curious result from such legislation, but it has been so held by the highest judicial authorities, a slight attention to which will, it is hoped, show the soundness of their views, which have received legislative adoption in the more recent Fishery Acts (b).

IX. Very shortly after the passing of the 5 and 6 Vic. c. 106, so many persons began to erect weirs under the title seemingly conferred by it on certain persons to do so, that the attention of the public was aroused, and prosecutions were instituted, some by private parties in the name of the Crown, and others by the Crown itself. One of the earliest prosecutions was the *Queen v. Haynes* (c), an indictment at Common Law for erecting a weir in the tidal part of the Bandon river, to the

(a) No others, it is clear, could *pretend* a right to erect them; and sec. 5 of 8 & 9 Vict. c. 108, and sec. 16 of 13 & 14 Vict. c. 88, also prohibit them.

(b) Specially sec. 19 of 13 & 14 Vic. c. 88, and sec. 7 of 26 & 27 Vict. c. 114.

(c) 7 Ir. L. R. 2. There was a second count for erecting a weir in a river less than three-fourths of a mile broad; but on this defendant was found not guilty.

injury of the navigation. At the trial before the present Chancellor, then Chief Baron, it was proved that the only obstruction was to small boats and lighters, and that larger vessels were rather *piloted* by the high poles of the weirs than impeded in their course up the river. The jury found that the navigation was injured, but only to a very slight degree; and the court of Queen's Bench gave judgment as follows (a):—"Here is a class of men, the owners of small boats, who are entitled to the navigation of a public river; and it is an injustice which the court will not sanction; that because of another class of vessels being advantaged, that will do away with the injury to smaller vessels. Every person has a right to the king's highway, and no one can obstruct that by making an erection which causes an obstruction. This is not the case of building an erection in certain places which may injure a few individuals, but on the whole is, perhaps, an advantage to the public. But here a person erects private weirs to the injury of a class of people who must not be injured by private speculations of that description." Judgment was given for the Crown, and the nuisances were removed. In several other cases where prosecutions were instituted at Common Law at the sessions, and in the superior courts (b) it was held that the erection of stake weirs being a nuisance to navigation, was still indictable at Common Law, notwithstanding 5 & 6 Vic. c. 106. A few extracts from the charges of the judges will abundantly show this. At the trial of *Reg.*

(a) Per Pennefather, C.J.

(b) See list of 7th Report of Committee of 1849, app. p. 116.

v. *Dobbyn* (a), an indictment similar to that of *Reg. v. Haynes*, Baron Pennefather, in charging the jury, said, "Wherever the tide ebbs and flows is a highway open to all her Majesty's subjects. Their rights are not to be abridged; and an interference with public right is a nuisance at Common Law." And at another trial the same very learned judge said, "Perhaps it was as well that individuals should know the law, and to set a question that had occupied so much of the public attention at rest for ever. The river (a navigable one) was a great public highway on which every man, poor as well as rich, had a right to travel, without inconvenience or obstruction. The river, from side to side, had a right to be traversed by the public; and if individuals wished to go along the shore, he did not see why they should be stopped or delayed, no more than they should in the centre of the channel (b)." Indeed, the statute 5 & 6 Vic. c. 106, s. 21, expressly provides that no weir erected under it should be injurious to navigation, and gave the Commissioners power to abate them, while it saved the power to do so of all other jurisdictions. So far, therefore, as they are injurious to navigation it is quite clear that any such weirs are illegal, by whomsoever or wherever erected (c). In the particular rivers Nore, Suir, Barrow, to which the statutes of Hen. 8 & G. 2 apply, they are of course illegal.

X. But as to weirs injurious to a public right of fishing only, if indeed there can be any such which

(a) See Report of 1849, app. p. 131.

(b) Report 1849, app. 131.

(c) Vide in addition to the authorities here cited, chap. 2 and cases there cited.

are not also injurious to the navigation by the public of the same waters, the law has been equally clearly laid down by very learned judges, whose opinions have settled the construction of the statute to be, that it does not legalise any weirs injurious to a public right of fishing; and though the Commissioners may not be able to deal with them as nuisances, other jurisdictions can. In a case decided by the Queen's Bench in the year 1845, (a) Judge Crampton held that an indictment for erecting a Scotch weir was maintainable, as such a weir was a nuisance to a public common of fishery, and thus stated his opinion (b):—"The question is, if the indictment be not maintainable on the statute (c), can it be maintained at Common Law? and I think it can. My opinion is, that a Scotch weir in a *tidal* river may be a nuisance to a public right of fishery. That it may be a nuisance to navigation (d) is not disputed. Now the same principle seems to me to be applicable to common of fishery in a tidal river, and to common of passage of boats up and down the river. If a common of highway up and down the river be disturbed,

(a) *Regina v. Ryan*, 8 Ir. L. R. 126.

(b) P. 126.

(c) The learned judge said that only in the particular case it did not infringe the statute.

(d) See preceding section. A person is injured, as one of the public, if navigating for any purpose he is obliged to go round *the obstruction*. Be it that he is boating for pleasure or profit, he is not at law obliged to go round the weir; it is a nuisance to the public right of navigation to be compelled in fact to do so. Serious damage to boats may be often the result. See evidence of Inspector Brady, Committee of 1862; Sir J. Dombrain, Sir R. De Burgho, and others, in that of 1849.

that is a nuisance ; and if a common of fishery be in the same or obstructed, why should not that also be a nuisance. The injury is equally to the public in both cases, and by the same means. The difference is, that in the one the injury is to the free passage of boats for commercial and agricultural purposes : in the other the injury is to the free fishing for the support and maintenance of the Queen's subjects. Indeed the two subjects are clearly connected, for the fishery is carried on by boats, whose course is equally obstructed as that of other boats. But, secondly, the case in 7 East. (a) expressly asserts that there may be a nuisance to a public right of fishing in this way."

This deliberate opinion of so eminent and learned a judge as Mr. Justice Crampton, supported by good sense and prior authority, would alone be sufficient to settle the point, that a Scotch weir (or any similar fixed engine), though it may have been erected in every respect conformably to the provisions of the various sections of the 5 & 6 Vict. c. 106, and therefore, of course, *not indictable as an infringement of that Act*, might yet be indicted at common law, if it is a nuisance (as it clearly may be, and most frequently though not perhaps universally is,) to the public right of free fishing in navigable waters.

The learned judge, whose opinion has before been quoted, Baron Pennefather, held the same doctrine on many occasions. Thus, in one case (b), he said, " The

(a) *Weld v. Hornby*, 7 E. 195 cited *ante*, chap. 3, p. 25.

(b) *Reg. v. Ryan*, 8 Ir. L. R. 122, N ; Appendix to Report of 1849 p. 34.

23rd section provides (a) that nothing in the 22nd section shall make a weir established for twenty years illegal; but it does not say that any weir not prohibited by the 22nd section is legal; and the proviso shows the intention of the Legislature. It provides that the parties shall be left to their rights. The question then is,—supposing the weir to have been established for twenty years before the passing of the Act, does the Act make it legal? It does not. The weir being established for twenty years (b) is excepted from the prohibitory enactment in the 22nd section, and is left as it would be at Common Law, and is to be justified at Common Law. Although no case directly in point has been cited, I think that, taking into consideration the words of Magna Charta, 12 Ed. 4, and the doctrine in *Weld v. Hornby*, (c) I am bound to say that the erection of this weir is illegal at Common Law as tending to the injury of the public right of fishing. It restricts the enjoyment of fishing by fishermen in that part of the river. I think it is prohibited by Magna Charta, and think it is an illegal weir. Whether it be “established” or not within the 23rd section (d) is of no consequence, as I am of opinion that it is an illegal weir.” The mere *nisi prius* dictum of such a learned judge would carry great weight on any doubtful point, but Judge Crampton in Banc fully adopted it in the language be-

(a) It was insisted that weirs erected or established twenty years were legal. Sec. 23.

(b) The learned Baron held that violent interruptions did not prevent it from being established. The Court held otherwise.

(c) 7 East. 195.

(d) So of course the same will apply to the 10 years in sec. 24.

fore cited ; and the learned Baron, in some years afterwards, when the law and his charges and opinions had undergone much canvassing by the public, and the "profession," deliberately adhered to his former judgment on this particular point, confessing, at the same time, that he had changed it on another of no great moment in a more recent case (a). "In looking to the indictment in *Reg. v. Ryan*, I find that judgment is entered up for the Crown upon the first count of the indictment, which is nearly similar to the first three counts of the present indictment ; and Judge Cramp-ton seems to have considered that count did contain a sufficient allegation of a nuisance at Common Law ; a nuisance either to the fishery or to the navigation. The other members of the Court seem to have entertained the same opinions. The counts of the indictment, which will be submitted to you (b), are those which allege that this weir is an injury to the navigation of the river, and that it is injurious to the public right of fishing in the place where it is erected. I do not understand those counts as laying the injury to be the impeding the fish from going up. I do not understand that that is the meaning of those counts, or that the nuisance is an injury to those who live in a higher portion of the river ; but the injury is to those who would have a right to fish in the place in which the

(a) *Kilkenny Spring Ass.* 1847. I do not cite all the charge, which is very long. He held the indictment did not show an offence under the statute 5 & 6 Vict., though it did at Common Law.

(b) i.e., to the jury he was charging ; he directed an acquittal on those counts, which charged an offence under the 5 & 6 Vic. c. 106, thinking them not sustainable under the circumstances.

weir has been erected. In my opinion the statute of Magna Charta, *which is declaratory of the Common Law of the land, has not been repealed by the 5 & 6 Vict. c. 106*; and that statute (Magna Charta), which is declaratory of the Common Law, declares and enacts that fish shall not be taken by fixed engines. I think that is the sound construction of the statute (Magna Charta), that the sea is open, and the right of fishing is open; and that right should not be interfered with by any fixture in the soil; and I am therefore of opinion that those Scotch weirs are against the Common Law, and they are indictable if they create an injury. I am to tell you that if the people of the neighbourhood had a right of fishing, if they could fish there, and if that right was interfered with by the Scotch weirs, they must be considered illegal and a nuisance. If they had no such right, or if it was impossible for them to avail themselves of the right, it would be no injury; but that the people of the neighbourhood had the right is quite clear, for all the subjects of the Queen have a right to fish in a navigable river, and no one has a right to fix down engines to take fish; and if they do, it is against the Common Law of the land; and that law has not been altered by the 5th and 6th of the Queen (a)."

XI. These opinions were all laid before the select Committee of the House of Commons in 1849; and an Act of Parliament was passed in the following year which

(a) As to navigation, the learned Baron said, "The man who owns a small boat is as much under the protection of the law as the owner of a vessel of 1000 tons; and he has right to the free use of the way as much as the proprietor of the largest vessel."

appears to have, in the plainest terms, legislatively sanctioned and adopted them.

The 5th & 6th Vic. c. 106, gave the power to the Commissioners of Fisheries to abate weirs under one state of facts only, viz., where they were injurious to navigation—sec. 21. The 8 & 9 Vic. c. 108, sec 3 (a), enlarged these powers of enquiring into all weirs erected contrary to the provisions and restrictions contained in the former Act. The 13 & 14 Vic. c. 88, sec. 14, passed A.D. 1850, extended the powers of the Commissioners to inquire into the legality of and remove all weirs which might be nuisances, and to declare them to be so and abate them as such; and seems to have given the Commissioners powers nearly co-extensive with those of the courts of Common Law to remove all weirs injurious to navigation or free fishing or which in any way infringed on the provisions of the earlier Acts. But the 19th section plainly adopts the law laid down so clearly repeatedly and recently before by Judge Crampton and Baron Pennefather. It *enacts* “that nothing in the said recited Acts or this Act (b) shall take away or in any manner lessen or impair the powers of the Court of Admiralty or any other court or jurisdiction in relation to the removal or abatement of nuisances accruing or occasioned to navigation, fishing, or the passage of fish by the placing, or maintaining, or using of weirs, fixed nets, or other contrivances.” Here there is a manifest reference to and recognition of the doctrines held by Baron Pennefather and other

(a) A.D. 1845.

(b) Thus all the Acts must be so construed as not to make any weir legal which was a nuisance to navigation or fishing. This is clear.

judges ; and it is an enactment by the Legislature that the public rights of navigation, fishing, or for free passage of fish, were in no degree to be infringed by the 5 & 6 Vict. c. 106, or subsequent Acts. This section is in truth to be read as if it was inserted in the 5 & 6 Vict. c. 106.

XII. The general results of these Acts, therefore, is that if any weir was erected contrary, in any respect, to the strict provisions of the Act 5 & 6 Vict. c. 106, the *Commissioners of Fisheries* might abate it on a special complaint being made to them. And that if any weir, by whomsoever erected, infringed those provisions, or was at all injurious to the public right of navigation or of free fishing, the Courts of Admiralty or other Courts of Common Law might abate them as nuisances.

The Commissioners had a special jurisdiction limited to certain cases ; the other courts had a general jurisdiction as to *all*.

There might be, and still perhaps are, some few weirs erected, not injurious to navigation or free fishing, in some remote and sparingly populated locality, or where the public never fished, or where they did not interrupt the passage of fish to other fishing localities : but these weirs must be few in number. They do not injure the public in any sense within the decisions adverted to, or within the legislative declaration in the 13 & 14 Vict. c. 88, sec. 14, that the former Acts cannot now be held to legalise any weirs injurious to navigation, fishing, or passage of fish ; and those weirs which are not so injurious may still remain unless in cases where they may become removable under the special provisions contained in the recent Act, 26 & 27 Vic. c. 114.

XIII. It was necessary to ascertain the extent as against the public of any rights supposed to have been conferred by the statute 5 & 6 Vict. c. 106 on proprietors and occupiers of lands adjoining the shores of the sea and estuaries and of all others, to erect Scotch and stake weirs, bag-nets, and other fixed engines. The chief duty of the "Special Commissioners," under the Act of 1863, will be to apply to all existing weirs the law on this subject as it has been expounded by the judges and recognised by the Legislature. Hence this long chapter.

CHAPTER VI.

EFFECT AND ADMINISTRATION OF THE FISHERY LAWS,
1842 TO 1862.

I. The chief feature in the code of Irish Fishery Laws, inaugurated by the statute 5 & 6 Vict., c. 106, A.D. 1842, was the revolution in all our notions, ideas, and common sense convictions, which it sought, for the profit of a few, to coerce all men to adopt and sanction. Our ancestors had, from the earliest period, condemned the use of fixed engines for the capture of salmon and other fish. They were, by universal experience, found to be most injurious to the industrious poor, who sought support by commerce, or fishing in tidal waters. They were destructive in the highest degree to the very breed of fish, as it is well known that their capture of mature fish bears but a small proportion to their necessary or wanton destruction of the young and fry of fish in a stage of growth useless for human food.

Former legislation denounced, and would have extirpated all fixed engines, Scotch and stake weirs, and bag nets. The legislators of 1842 sought, by apparently sanctioning a limited few, indirectly to legalize all. Many ages reprobated, this one approved, the erection of these nuisances to fishing and navigation. Let us, as a digression from the dull but necessary discussion of what *was the law* from 1842, and *what is the law* to be administered by the "Special Commis-

sioners" under the Act 26 & 27 Vict., c. 114, take a brief retrospect, and examine into the justice and wisdom of the spirit which guided the legislation of 1842—how it worked in practice, and how the laws were administered by those to whom the duty and trust of their administration were confided.

II. Some improvements were undoubtedly introduced into our Fishery Laws by portions of the Act of 1842, and the subsequent statutes. The provisions empowering the Commissioners to sanction parties laying down oyster beds, and giving such persons a property in these beds—those authorising coast-guards and police to assist in the working of the fishery code, and the introduction of the system of fishing licences and conservators, without which all other wholesome provisions of the code would have proved useless—were certainly great steps in advance, and effected some mitigation of the injuries caused by that partial legislation; but, despite of these beneficial additions to the Act of 1842, we shall see how unjust was its spirit, and how ruinous to the public interests was its operation, and, as a climax, how partial and reprehensible was the administration of the law by every one. This may seem an overcharged statement. It will not be without interest to establish its truth; it may induce, by a calm consideration of the vast injuries resulting from such injustice, and maladministration of the laws affecting one very important interest, the fisheries of Ireland, a wiser spirit of legislation, and, for the future, an honest and just enforcement of these laws.

III. It is unnecessary here to consider the sections of the Act of 1842, or subsequent Acts relating to

Queen's gaps ; they were simply "a dead letter," (a) and inoperative, and had not the least tendency to correct the error or public injustice arising from those clauses relating to fixed engines.

Let us enquire, then, from authentic sources, was any great public injustice perpetrated by this departure from the spirit which had formerly animated our Common Law, and all former legislation on this subject. The opinion of the Fishery Commissioners is the most disinterested and important on this point. It is by them stated, very calmly and forcibly, in their Report of 1849 : (b)—

"The object of the statute authorising the use of stake weirs, appears to have been for the purpose of introducing more effective engines for the capture of fish ; and the privilege being limited to the *occupiers of land*, and the owners of "several fisheries," the Common Law rights of the public were unquestionably interfered with for the benefit of a very few, comparatively with thousands, who exercised and enjoyed the right, as subjects, to the free and uninterrupted fishing and navigation of the tideways ; and a consciousness of this appears to have been felt by those who sanctioned the Act.

"The saving for weirs established for ten and twenty years, has led to much abuse, and been the cause of inflicting an aggravated degree of injury upon the public, for upon the strength of this, many parties erected weirs after the passing of the Act, in places where they had formerly been prostrated by legal means, through

(a) Report of Commissioners, 1849.

(b) Appendix Committee's Report, 1849, page 157.

the ordinary tribunals of the country, as well as by the public, in the enforcement of their rights." "The principle of rewarding those who might have persevered from time to time for twenty years in violating and resisting the law, and in usurping the rights of the public never could have been contemplated."

"Taking a broad view of the question of stake weirs, we think that any benefit which might accrue to the community at large, by enabling a certain class of persons limited in number to use engines of this description, upon the assumption that a greater quantity of fish in the aggregate would be captured, and which we very much doubt would be the result, (a) is far more than overbalanced by the means of employment to thousands afforded by fishing being cut off, while the industry of the lower classes who ply with small craft within our harbours and tideways, is also greatly crippled and interfered with."

IV. It would be easy to furnish further extracts from Commissioners' Reports to a similar effect. The few given most forcibly show the great injustice thought to have been inflicted on the public by the legislation of 1842, in the opinion of those most competent to form a correct one, the persons trusted with the administration of this unjust statute. (b)

V. Nor were the public slow to feel the injury, as well as injustice, inflicted on them by this legislation. It has been seen that the law was, in reality, scarcely changed from that which existed for centuries up to

(a) It will be afterwards seen how well founded was this doubt.

(b) See Commissioner Ffennell's very clear evidence, 1849 and 1862.

1842, but there seemed a change to have been made in its spirit and intention, of which rich proprietors speedily availed themselves; they could defy the powers of Government, and oppose all efforts to enforce the strict law with equal legal resources, and greater energy and perseverance, stimulated by the hope of gain. The poor, who were the parties chiefly injured, were helpless, and completely at the mercy of the rich, the landlords, magistrates, and friends of the administrators of the law, and they suffered by thousands the severest injuries and most striking oppression from the working of this Act. Again, some few extracts from the Report of 1849 on this head:—

“Our fishery is gone, after a severe struggle for twelve years up to 1842, when the English Parliament handed it over to the landlords. Out of sixty nets, only one net got one salmon on the 11th instant, and not one at all yesterday. Our fishermen are going to the poor-house.” (a) In the great estuaries of the Suir, Nore, and Barrow, which afforded employment to about 2,000 fishermen, the introduction of stake weirs caused a great falling off in their numbers, and numerous well-founded complaints were made from the fishermen that their means of livelihood were cut off by the introduction of bag nets. (b) By one witness it was calculated that but for the introduction of stake weirs and fixed engines, the estuary of the Shannon and its fishery would have afforded sufficient scope for the industry and profitable employment of about 20,000 peo-

(a) Letter of P. Magee, Rep. 1849, 514.

(b) Mr. Ffennell's Report, 1849, 252.

ple. (a) Another gentleman of great intelligence and experience said, "I look upon it that one stake weir or net, which can be managed by two or three men, (and it requires their labour only a couple of hours,) will take more salmon than would give employment and profit to fifty men, if the weirs were all away." (b)

VI. But it scarcely required the reference to authority or evidence to make it clear that the introduction of fixed engines must have thrown large numbers, indeed thousands, (c) out of employment. The same may be said of the introduction of all kinds of improved machinery or productive engines into any species of industry, agricultural or mechanical. Numbers must suffer by such *improvements*, but it was the peculiar feature of the injustice of the legislation of 1842, that it tended eventually, and at no distant date, not to multiply artificial resources for the general and permanent advantage and enjoyment of all, but to destroy what would really have proved boundless natural resources of profitable employment and food, and this for the selfish, limited, and temporary gain of a few powerful and wealthy individuals, of whom some were legislators who passed the Act for their own advantage.

Under the effects of this unjust and short-sighted legislation (of course referring to that portion relating to fixed engines), the Salmon Fisheries of Ireland, and

(a) Mr. M'Mahon, page 28, *et seq.*

(b) J. D. Croker, 57.

(c) Mr. Carr, of Wexford, a gentleman of great intelligence, and well acquainted with the facts, has publicly stated at recent fishery meetings, that over 2,000 were sufferers in his district (estuary of Suir, &c.,) by the stake weirs, &c.

indeed the fisheries generally, steadily and alarmingly declined. Individuals, no doubt, profited; they captured more largely. Landlords and weir owners gained, the public and the poor suffered in a great decrease of salmon, which rapidly became, from an ordinary article of food for the middle classes, a high-priced luxury only within the reach of a few. One gentleman of high position and great intelligence, stated to the Committee of 1849 (*a*)—"The history of this river (Barrow) and its fisheries, proves that since the weirs commenced in 1809, when attention was paid by the fisherman, and several Acts of Parliament which they discovered were put in force, they prosecuted and convicted several persons: from that time the fish increased 100 per cent. From the year 1842 it has been declining every year."

Similar evidence was given as to others of the principal rivers of Ireland, the Shannon, Lee, Blackwater, and it was shown that for one salmon which could then have been captured in the upper waters, 10 or 20 could have been taken some few years previously. The decline was certain and progressive. (*b*) In the annual reports of the conservators to the Commissioners, there appear also such statements as the following:—
"Salmon-fishing unsatisfactory, and, from the increase of bag nets, there is no prospect of improvement." (*c*)
"The Salmon Fisheries falling off considerably, in

(*a*) Mr. Talbot, Report, 511.

(*b*) Mr. Talbot, 512; Sir R. De Burgho, p. 79; J. D. Croker, p. 33, 52; Mr. Ffennell, 301, app. 68. The entire evidence is very interesting, but even extracts would be too long to insert.

(*c*) Report of 1861, p. 12.

consequence of bag nets being used along the shore, which is very injurious." (a) In some places more salmon were captured than there were before under the old methods of netting, but only to the injury of other places; and throughout Ireland generally the decrease in the entire yield of salmon, and in the energy with which the fisheries were worked, was striking and alarming. In one year the number of boxes of salmon exported to London had declined by 20,000, (b) and as to the other fisheries of Ireland, the Commissioners have, in their last *annual* Report, stated that, "in many places, the fishing population appeared to be dying out; and the boats are to be seen lying idle on the beach."

The coast and estuary salmon-fishings added much to the productiveness of fishing as an employment for the population. The fisheries were at all times *mixed*; and the introduction of stake-weirs, bag nets, and other fixed engines threw the salmon fishery, the most simple and valuable of all kinds, into the hands of the landed gentry, to the immediate injury of the poor who fished for all sorts of fish as well as salmon (c), and to the almost certain extinction of fishing as an occupation or means of profitable employment and comfortable livelihood for a large portion of the labouring population of Ire-

(a) *Ib.* 17.

(b) See *Quarterly Review* for April, 1863. This article and another, *Q. R.*, vol. 101, are exceedingly well worth reading, for the useful and interesting information contained in them—the habits of salmon, and the Salmon Fisheries generally.

(c) Report of 1849—Mr. Ffennell's evidence, 301,2; Report Com. 1862, p. 4.

land. In the year 1845 the Irish fisheries gave employment to nearly 100,000 persons; 20,000 vessels, boats, &c., were engaged in these; and in the year 1859, to less than 50,000 persons, and to only 11,000 vessels. Well might the Commissioners say that the fishing population seemed to be dying out.

VII. But the very disastrous result of the Act of 1842 cannot, with any fairness, be attributed wholly to the provisions it contained with regard to stake weirs, and the other classes of fixed engines which it appeared to sanction. It was not so much the law as the very disgraceful mode in which all classes connected with its administration—Magistrates, Government, Commissioners, Admiralty, and Police—concurred in not enforcing its wholesome and beneficial provisions, that at length made the burden greater than could be long tolerated with impunity. A most painful display of human weakness, infirmity, neglect, and misconduct is revealed to us in the evidence contained in the report of the Select Committee of 1849, and other official and authoritative documents; and to some of these disclosures, as they must seriously affect the working of the beneficial portions of the fishery laws from 1842 to 1862, the readers attention is invited. Similar acts and a similar spirit there is still too great reason to apprehend (a), may prevent the public from deriving the fullest advantage from the remedial provisions of the statute of the present year.

It has been already stated that under pretext or

(a) Recent cases in the county of Waterford, at Lismore and Callaghan, give reason to fear similar abuses in future.

colour of the clauses relating to stake weirs, &c., in the Act of 1842, many persons who never could have proved the least title under this Act, at once proceeded to erect Scotch weirs and other fixed engines in the chief estuaries round Ireland. Their number became alarming, and the injury from them daily increasing, the attention of Government and of the Fishery Commissioners was directed to the abuse, and both earnestly tried to correct it by a strict enforcement of the letter and spirit of the Act. The spirit and letter were considered to afford only a conditional legality to a very few and unimportant weirs, while in fact they were erected by hundreds (a). In length they were limited to low water of spring tides, and were to have no works attached to them extending beyond this level. In practice the inch was given, the ell was taken; and they were made to extend into deep water, and stake weirs had frequently one or more bag-nets in deep water fixed to them (b). The law as to Queen's gaps, where they existed, was "shamefully evaded" (c) by various devices to scare the salmon from getting up the river through them. Stuffed figures to resemble otters, or crocodiles, or other obstructions were placed in the gap for this purpose and successfully (d); and the law for the observance of the close annual or weekly time was violated often systematically by wealthy weir-owners, and not seldom by the poor anglers or boat fishermen. Prosecutions were instituted at petty sessions or quar-

(a) See Sir R. De Burgho's evidence as to those in the Shannon. Clonderlaw bay was made to "resemble a forest."--Report of 1849.

(b) See Sir J. Dombrain's evidence, 1849; J. F. Brady, 1862.

(c) Report of 1849, p. 68.

(d) Sir R. De Burgho, 92-3; J. D. Croker, 25, 62.

ter sessions before the justices of the peace who had a general jurisdiction over all offences committed contrary to the Act of 1842; proceedings were taken by the Commissioners and by Government to abate illegal weirs, and with the following results:

In some places the magistrates declared that they would not act at all, and discountenanced all prosecutions for offences against the fishery laws (a). In some the magistrates entered into arrangements among themselves that they would impose the lowest penalty for these infractions; and some went through the farce of inflicting a fine of one halfpenny on the offender (b). In one county bordering an estuary where illegal engines were numerous, the magistrates refused to interfere to convict offenders against the Fishery Act, as it seemed to violate Magna Charta; they were "themselves weir-owners (c)." In another the magistrates refused to decide according to the law as laid down by their learned chairman, law officers of the Crown, and the judges of the superior courts, the meaning of the word "established," (d) and gave it such an interpretation as suited their own opinions and interests and those of their friends (e). A rich offender, who, it was proved, made £36 by one wilful violation of the close weekly time at his weir, was fined £5, the *minimum penalty*, instead of £50, the maximum, leaving him a stimulating

(a) Mr. Ffennell, 236-7.

(b) Sir R. De Burgho, 96. Commissioner Barry, app. 66, states the magistrates openly encouraged breaches of the law, and discouraged the police.

(c) Vide p. 236, 108.

(d) Established twenty years, vide sec. 23, see 236, Rep. 1849.

(e) App. 44.

profit of £31 (a). Other wealthy owners of weirs habitually violated the law in the same way, as they knew their friends would either dismiss the case, or fine them the minimum penalty instead of the maximum fixed by the statute; and corrected by an appeal to their friends, probably collected for the occasion, any zealous deviation from the minimum (b). Weir-owners sat on the bench where cases against their friends and neighbours were disposed of. As weirs multiplied and were possessed by magistrates and their friends, it became more difficult to get them to interfere at all (c) or to punish the guilty. The most frivolous pretence of floods and stress of weather was accepted with favour by them as an excuse for the violation of the law. The legislature, to obviate their favouritism, censured them by providing minimum penalties where a discretion or a maximum were before vested in them; and the cases were *dismissed*. (!) Licences for weirs were taken out in the names of paupers, absentees, and minors, in one case where the infant was only four years old to secure impunity; (d) and the partiality and misconduct of the magistrates, when they themselves, or their friends, were the owners of illegal weirs, or had violated the provisions of the Act, became notorious, and settled. Indeed when we read the list of the weir-owners on one large estuary, it is apparent how hopeless was the attempt, and futile the endeavour, to induce magistrates to interfere to protect the poor and the public against the acts of

(a) J. D. Croker, 85.

(b) J. D. Croker, 37, 38, 56; Sir R. De Burgho, 97-8.

(c) Sir R. De Burgho's Evid. 81, 96, 97.

(d) Vide Appendix to Report of 1849, p. 165.

themselves or their powerful friends (a). The rich violated the law with impunity and contemptuously. But while such was the mode in which the magistrates administered the law against the rich, it was quite different when the poor angler or fisherman was the offender; and he, more especially if he had dared to take an active part in assisting Government to abate illegal weirs, was at once punished heavily, and to the fullest extent of the law (b). The poor were at once injured and intimidated. (c) No wonder, then, that the poor loudly complained or sullenly resented such a system of impunity for the rich, and harshness for the poor, and their complaints and grievances were laid before the Government and Commissioners of Fisheries.

VIII. Proceedings before magistrates were cheap but worthless. The weir-owners were rich and united, contributed to defence funds liberally; and if by chance a conviction was obtained, removed the proceedings to the Queen's Bench, which caused all the expense and delay of regular law-suits. This deterred private prosecutions. Some exertions were made to obtain funds to secure the due administration of the law, and from all interested in the River Shannon, upper and lower waters, £48 were collected. (!) (d) Government alone, it was thought, could maintain the respect due to the law, and protect the poor and the public from the oppression of the rich. Government at first

(a) Vide p. 103, Report of 1849; Lord Glengall, 142.

(b) Sir R. De Burgho, 100; Lord Glengall, 144; Mr. Ffennell, ib. app. 91, 92.

(c) App. Report, 1849, p. 162.

(d) Sir R. De Burgho, p. 82.

reluctant to interfere, and advised by the Commissioners not to do so, at length yielded to public opinion, and was, with the slowness and solemnity befitting the state machinery, put in motion to vindicate the majesty of the law.

What was the result?

In many cases convictions were obtained against the owners of weirs, and the weirs were abated only to be re-erected in the same place, or in places immediately adjoining (*a*). The weirs of one magistrate, a D.L., at the foot of his lawn, were abated, and erected by unknown friendly hands in the night without his knowledge, and this at the bottom of his demesne and for his profit (*b*). Fines were imposed and not levied; judgments to abate weirs pronounced and not enforced; warrants issued and not executed; (*c*) the hostility of Government appeased by applications by their powerful political supporters, themselves weir-owners; and at last Government grew tired of the ungracious and expensive task of trying to enforce the law against wealthy offenders and political supporters, and abandoned all such invidious proceedings. A prudent parsimony, too, ever prominent when merely justice is to be done, seems to have had its influence in arresting the action of the Government, and then recourse was had to the Commissioners of Fisheries (*d*).

(*a*) 239, and see list of re-erectments, &c.

(*b*) Lord Glengall, 141, app. 76; 27 re-erected, 145.

(*c*) Mr. Ffennell, 239, app. 166. The police objected to go into the mud to abate the weirs.

(*d*) App. 82, 96, 101, 102. Letters as to expenses, J. D. Croker 62, 63.

IX. But the Commissioners of Fisheries, though anxious to discharge their functions honestly and effectively, (a) had at best but an extremely limited power in abating or remedying the chief grievances produced by the legislation of 1842. Their expenditure was narrowly watched and jealously controlled. They had only power to abate *weirs injurious to navigation*, or at least so they construed the Act, though a more correct reading of it might have given them much more extensive authority, and this power the Commissioners were reluctant to exercise, as it was one more suited to the functions of the High Court of Admiralty, the jurisdiction of which was particularly preserved, and which seemed more appropriate for this particular purpose. This reluctance appears from their reports, and was not altogether free from justice. The Chief Commissioners' hands and those of the Board of Works, were more than sufficiently full of other business, and they were not disinclined to hand some of it over to the higher and more efficient agency of the Admiralty. Some prosecutions indeed were instituted by them, but with the same unhappy results, evincing the defective state of the law and the increase of the enormities requiring redress.

The Commissioners were powerless unless a formal written complaint, containing the most strict and minute particulars of the mode in which the Act was violated was laid before them (b); and those who know this

(a) See App. 1849, p. 159—a very creditable remonstrance to Government.

(b) 8 & 9 Vict., ch. 103, sec. 3.

country at all will perceive how little likelihood there existed of such formalities ever being observed, where neither association, nor energy, nor money, nor zeal was forthcoming to protect the common weal from those who by their position ought to have been its protectors—the wealthy weir-owners. Accordingly the Commissioners soon discovered their inability to redress the growing grievance and increasing injustice. They could, however, complain of it; they did so. An interesting and fitful correspondence extending over a period of ten years, with, however, very large gaps, between the Commissioners of Fisheries and Admiralty, was laid before Parliament in the year 1862 (*a*), from which it appears that the Commissioners complained to the Admiralty of the state of the rivers Bride and Blackwater, which were studded with weirs, a list of which was sent, most of which, it was believed, were illegal violations of the special provisions of the Act 5 & 6 Vic. c. 106, and which also seriously injured the navigation of these rivers; and the Commissioners required the Admiralty to remove those nuisances.

A survey and report on those rivers was made by a most intelligent officer, Captain Frazer, for the Admiralty. He reported (*b*) that the weirs were all more or less injurious to the river, and also to the salmon fishery; and accompanied his report with a valuable chart illustrative of his report; and the Commissioners and inspectors justified the opinions of that officer by further official documents, and moved the Admiralty to action. The correspondence between these high depart-

(*a*) 28th May 1862, No. 231.

(*b*) 1851.

ments, the Commissioners of Fisheries and the Admiralty, which commenced in 1851, and had been interrupted by a chasm of ten years, was resumed in 1861, and was closed by a civil and pithy letter from the Secretary of the Admiralty, dated 1st Nov. 1861, containing some hints which may not be without interest to the public. "The proceeding on the part of their lordships would be both tedious and expensive (a), whereas Parliament has recently conferred summary powers upon the Commissioners of Irish Fisheries to abate all weirs of this description, *i.e.*, injurious to navigation; and if the parties *locally* interested now consider the weirs objectionable, my lords consider that it will be best that they should exercise their own powers for the removal of the nuisance complained of." From this opinion of their lordships of the Admiralty, considering the mode in which they have exercised their powers hitherto, few will be disposed to dissent. In their last report—that for 1862, pages 4 and 5—the Fishery Commissioners assure the public that the Lords of the Treasury had approved of their non-interference with weirs injurious to navigation, as their abatement was more immediately the duty of the Admiralty; and in this stage of the official complaints, refusals, and approvals, this chapter may be closed.

(a) The enemies of the Board assert that the Admiralty are habitually tedious, and far from being disinclined to expense.

CHAPTER VII.

GENERAL VIEW OF THE RECENT FISHERY LAWS, AND OF
THE PASSING THE ACT 26 & 27 VICT., c. 114.

I. Such as has been described in the preceding chapter, was the melancholy result of a twenty years' experience of the modern fishery legislation—the law openly defied, or shamelessly evaded, the magistrates unjust, the superior departments apathetic, or in apparent conflict, the fisheries constantly and progressively decreasing, the fishing population dying out, and lastly, the poor oppressed, every man by his neighbour, and flying “from petty tyrants to the throne.” Fixed engines were rapidly increasing in number, and free or Queen's gaps had not been opened. It is not surprising, then, that a feeling of helplessness seemed to pervade all classes of the oppressed; the oppressors were few, but rich, united, powerful, and many of them supporters of the Government. The injured were many, disorganized, sullenly apathetic, hopeless, and glad to avail themselves of the excuse readily afforded them by the maladministration of the law, as a reason for no longer taking any interest in the preservation of the upper portions of the river, or in the punishment of their friends, the weir-owners, in the

lower waters. The slothful found lions in their paths and avoided acting; the rich declined subscribing and saved their money and trouble at the same time. A more hopeless state of things can scarcely be imagined than the condition of the Irish fishery laws, and their administration in the year 1862, and commencement of the present year.

II. To the talent, energy and perseverance of one gentleman, Mr. M'Mahon, M.P., for Wexford county, is mainly, if not wholly, due the opportunity now afforded to the public of inaugurating the commencement of a brighter period, if they can be induced to exhibit some little steadiness and take some slight trouble, in securing to themselves the full benefits derived from the labours of others who have tried to serve them. Mr. M'Mahon, not deterred by the very discouraging cheerless prospect of trying almost unaided and alone to obtain an alteration of the Act of 1842, had from the time of his entrance into Parliament steadily pursued this object, and year after year introduced a measure for the purpose. Time gradually brought round many converts to his views, and convinced them of the injustice and bad effects of the Act 5 & 6 Vict. c. 106. The destructiveness of fixed engines had been acknowledged in Scotland and in England, where, from the use of such means of capture, salmon had disappeared from many rivers before teeming with them; and the legislature, after greatly restraining their use in Scotland (*a*), acting on the report of a royal Commissioner of 1861, had

(*a*) See Quarterly Review, April, 1863, p. 415-16, for the history of the legislation for the Tweed and for England.

been induced to pass an Act wholly abolishing them in England (a), saving indeed any ancient right of or mode of fishing as lawfully exercised at the passing of the Act, by anyone under a grant, charter, or immemorial usage. Provision also was made in this Act for opening Queen's gaps in all fishing weirs going across rivers. Scotch weirs and all similar weirs of modern invention were swept away by these Acts; they were not *ancient* modes of fishing, but of well-known recent introduction (b). English juries were not quite so pliable in their verdicts as to what was an *ancient* mode of fishing, as Irish justices in their decisions against all law as to what were "established" for ten or twenty years before the year 1842; and the law was energetically applied to abate all the destructive nuisances of stake weirs. A marked improvement immediately followed the application of this law in the salmon fisheries of the English rivers, and in that of the Tweed, for which similar Acts had passed in 1859, while the salmon fisheries of Ireland were fast decreasing (c); and public opinion became more favourably impressed with the soundness of the views entertained by Mr. M'Mahon as to the Irish fishery laws, and the injustice and impolicy of upholding longer the monopolies and abuses sheltered partly by those laws, and partly also by their maladministration.

(a) 24 & 25 Vic. c. 109, sec. 11.

(b) This has been twice decided. See extracts from "Field" of 5th Sept. 1863.

(c) There was some improvement in 1862, manifestly from the anxiety of the entire owners to get "a good return." They let up more fish in 1861 to breed and return, and be caught in the last year.

III. In the year 1862 Mr. M'Mahon succeeded in the House of Commons in passing a bill though the second reading, consolidating the useful provisions of the Irish Fishery Acts passed since 1842, and also abolishing all fixed engines. This bill was referred to a select committee, who took some evidence, chiefly that of Mr. Ffennell and Mr. Brady, two gentlemen entirely disinterested, and who, from their official position connected with the Irish Fishery Board, and also the English Board, then recently established, contributed an amount of knowledge and sound opinion which, added to all the evidence and numerous reports on the same subject, entirely exhausted it; and made it plain to all not weir-owners, how destructive to the best public interests, and indeed to their own ultimate private interests, were these monopolies of capture by fixed engines and fishing weirs without free gaps (*a*). It was, however, too late in the session for Mr. M'Mahon to attempt passing his bill through any further stages in either Houses of Parliament. He postponed the measure with some reluctance, announcing at the same time his determination of introducing a similar bill at the earliest period of the next session.

IV. Accordingly very early in the present year 1863, he again introduced a bill, confined chiefly to abolishing all fixed engines, and providing for the free opening of Queen's gaps in the stone weirs across rivers,

(*a*) Mr. Commissioner Ffennell. Mr. Lysaght in a valuable pamphlet enumerated 12 Reports of Commissioners and Committees on this subject from 1825 to 1862; viz. two in 1828, two in 1836, one in 1842, one in 1849, 1847, 1849, three in 1860—Report 1861, 1862.

the clauses in the former Acts relative to compensation to the proprietors of these mural obstacles having been "a dead letter," (a) and despite an opposition formidable from their position, their energy, wealth, and organization, succeeded in carrying it to a second reading and into committee. He had been aided in his exertions by his having at least some little public feeling roused on the subject throughout Ireland. A respectable meeting of landed proprietors and others in Dublin had exhibited some hopes of concert, union, and vigour. Contributions too, nearly equal to that from one weir-owner opposed to the bill, had been received from many counties to defray the expense of printing circulars and sending a deputation to London (b). Petitions were presented and able pamphlets circulated; (c) and supported thus from without, he had within the House of Commons also many who cheerfully and without jealousy co-operated with and helped his public spirited exertions. (d) It was most important also that the Report of 1836 had stated that any legislation

(a) Commissioner's Reports.

(b) One county, a maritime one, where stake-weirs abound, actually contributed 10s. to this fund!

(c) Instructive pamphlets were written by Mr. Ffennell, Mr. Blake, M.P., Mr. W. Lysaght, and Mr. Sinclair. The two last named as the Hon. Secretaries at the Dublin meeting, and most experienced anglers, and well acquainted with the Irish fisheries.

Mr. Sinclair's had an excellent map attached, showing the fishing out of rivers by bag-nets.

(d) I would gladly mention the names of some of the noblemen and gentlemen who, in the House of Commons and Lords, materially and actively contributed to the success of the measure, but my enumeration might be partial and imperfect. I need only say that English, and Scotch, and Welsh members helped zealously the Irish cause.

which would be found suitable for England should be also adopted for Ireland.

V. The Government at last consented to take the matter up, and, despite a very strenuous and well-organized opposition, among which were comprised some of their habitual supporters, and even their subordinate officials, carried in an honest and most creditable manner the somewhat mutilated, but yet large and comprehensive, and most beneficial measure, the 26 & 27 Vic. c. 114; the effect and mode of administering of which as to fixed engines and weirs are next to be considered (a).

(a) I gladly bear testimony to the merits of opponents; and the Home Secretary, Sir George Grey; the Irish Secretary, Sir R. Peel, and the Under-Secretary, Mr. H. A. Bruce, deserve great credit for the way the bill was conducted in the Commons by the Government. In the House of Lords the measure was safely and ably passed by the aid of Lord Stanley, of Alderley, and Lord Granville, aided by Lord Donoughmore, who really deserves in that House the same credit for his share in passing this useful Act as Mr. M'Mahon in the House of Commons.

CHAPTER VIII.

26 & 27 VICT., c. 114—ACT OF 1863—EFFECT OF, AS TO
BAG NETS AND FIXED ENGINES.

I. Having, then, traced the law on the subject of those fixed engines, to the existence of which the great and rapid decline of the salmon, and, indeed, other fisheries of Ireland, is attributable, and having shown what it really was at the passing of the Act 26 & 27 Vict., c. 114, and how disgracefully all that it contained of good, was administered, next in order comes the consideration of the recent largely remedial Act, and its effect in altering the law, and the administration of the Fishery Code.

The Act, as to all fixed engines, will not come into *full* operation until the commencement of the year 1864, as, by the last section, fixed engines on which the annual licence duty had been paid, and which were in use at the passing of the Act, 28th July, 1863, were permitted to continue to the end of the present fish season.

II. The chief provisions of this statute, so far as it affects any alteration in the Fishery Laws, are those which relate to fixed engines, Queen's gaps, annual and weekly close seasons, conservators, and fishing licences; and these applied to, or interwoven with, the former state of the law, shall be considered in their order. The

clauses relating to the general administration of the Fishery Laws are also of great importance and merit the first attention.

The 32nd and subsequent sections of the Act, provide for the appointment of three persons, to be styled the "Special Commissioners for Irish Fisheries." (a) All the powers and authorities vested in the Commissioners of Public Works, and Inspectors of Fisheries, with the exception of the powers relating to white sea-fish and oysters, are transferred to the "Special Commissioners." They are to continue in office (b) for two years, and until the end of the then next session of Parliament, a time, it was thought, quite sufficient for them, with due diligence, to execute the important trust reposed in them, and to carry out and superintend the salutary changes of the law, and its administration contemplated by this Act.

Of the three Special Commissioners, one is to be a barrister of not less than seven years' standing, and another an officer in the Royal Navy. (c) Thus, reasonable provision is made, that all legal rights, whether of the public, or of individuals, may be understood and respected by the Special Commissioners, and that the public interest of free navigation would be skilfully investigated, in questions relating to fixed engines, and vigilantly guarded. Very extensive powers and privileges are conferred on these special Commissioners, (d)

(a) I shall style them, for brevity, "Special Commissioners," and thus distinguish them from "*the Commissioners*" still to act for same purpose, section 15.

(b) Section 15.

(c) Sections 32, 37.

(d) Section 38, and other sections.

and they are to have, in addition to those peculiar powers given them by the Act, all such powers, rights, and privileges, as the judges of the Court of Queen's Bench in Ireland possess, to enforce the attendance of witnesses, production of all documents, and carrying out their orders.

This is an outline of the new working machinery provided by this important Act, and undoubtedly the failure of the previous machinery from the highest department of state to the inferior magistrates, was the most palpable and mischievous in its effects. The evidence taken before the Committee of 1849 showed the advantage and necessity for adopting the improved machinery, and it is likely to prove successful if the public lend their aid.

III. The important duties of the special commissioners as to "fixed engines" are defined by the 5th, 6th, 13th, and 17th sections.

Before, however, proceeding to these, it is necessary to state the great "declarations of right" in the public, contained in the 3rd and 4th sections as to these engines. The third section provides that after the passing of the Act no *bag net* (a) shall be placed or allowed to continue in any river, or the estuary of any river, as such river or estuary has been defined by the Commissioners, or shall be defined by the special Commissioners, or within a distance of less than three miles from the mouth of any river, as defined as aforesaid. Any bag net placed or continued in contraven-

(a) A most destructive fixed engine, greatly on the increase. In the Shannon, in the year 1840, there was not a single bag net, now 71. See Mr. Lysaght's Pamphlet, p. 5.

tion of this section is to be deemed a common nuisance, and may be taken possession of or destroyed. Heavy penalties, the maximum £20, the minimum £5, are provided against the owners of such bag nets for each day they are used; but the section is not to apply to bag nets within three miles of a river, in the whole of which, including all tributary rivers and lakes upon its course, the proprietor of such bag nets has the exclusive right of catching salmon. There is believed to be one such river in Ireland.

IV. The full effect and benefit of this section cannot be felt until the commencement of next year, when the permission to continue to the end of this season the use of all fixed engines on which licence has been paid, will have fully expired. Then the public may take the law in their own hands; they need not wait for the special Commissioners to act; any conservator, water bailiff, policeman, or anyone else may act for himself, and may destroy a bag net erected or used in any river or estuary, or within three miles of the river's mouth, contrary to the provisions of this section. The words are very clear; the bag net is to be deemed a common nuisance, and may be taken possession of or destroyed; and under a much less extensive provision in s. 11 of the English Act, 24 & 25 Vic. c. 109, it has been held that any one of the public might, without formal process of law, destroy a fixed bag net erected contrary to its provisions. The 11th section of the English Act provides that no fixed engine of any description shall be placed or used for catching salmon in any inland or tidal water, and any engine placed or used in contravention of this section may be taken possession

of or destroyed; and it, too, imposed, as the Irish Act does, penalties on the offender, and in two recent cases it was held that any one might take possession of and destroy engines erected contrary to the Act, and that the right to abate was not confined to conservators or any particular class, but was vested in the public. Indeed this was treated as almost too clear for argument (a). The Common Law efficient mode of abating public nuisances is fully restored.

V. Any bag-net, therefore, in any river or its estuary, or within three miles of the mouth of any river, as such river, mouth, or estuary, have been already defined by the Commissioners, or may be defined hereafter by the Commissioners or Special Commissioners, is henceforth a *common nuisance*—illegal. The public may act for themselves; and if they do not they must only bear the injury quietly, and cannot complain of Government, or Commissioners, or of anybody, but their own want of public spirit and concert.

In addition to this very summary remedy, of which it is hoped, the public will not hesitate to avail themselves, and which is that adopted and recommended in England (b), proceedings may be taken to enforce the salutary penalties provided by the same section, forfeiture of the salmon captured by the nets, and a minimum fine of £5 or a maximum of £20 for every day a bag-net shall be continued in use contrary to the pro-

(a) *Williams v. Blackwall*, 82 L. J., N. S., Court of Exchequer, p. 174. Same case and law in another action by the same parties, Liverpool Summer Assizes, 1863, "Field," Sep. 5, 1863; sec. 3 of Irish Act is taken, with more stringent words, in addition, from section 11 of English Act.

(b) As before stated, early used and applauded in Scotland.

visions in this clause. An indictment may be also brought at Common Law or under the statute against the proprietor of any such bag-net, and the Special Commissioners may abate it—an accumulation of remedies which we might imagine to be quite sufficient to secure every one in future against the illegal use of bag-nets in rivers and estuaries, did we not know the habitual inertia of the public.

VI. Some persons, however, have conceived the idea that it will be in the power of the "Special Commissioners" to protect the bag-nets of some favoured few by an arbitrary and evidently capricious and partial "definition" of the mouths of rivers and estuaries under the power given to them by sec. 17 of the Act of 1863, and the reference to this power in sec. 3. This however, seems an error. Supposing for a moment that the Commissioners in exercising the extensive, judicial, and not arbitrary, powers vested in them, could act so absurdly, and daringly, and wrongly, as to define *e.g.*, the mouth of the river Shannon to be the lax-weir, and of its estuary the Fishers' Stent; or of the river Lee to be at the custom-house in Cork, and of its estuary to be at Glanmire, or the mouth of the Liffey to be at Island-bridge, and of its estuary the North Wall Light-house, that would not protect bag-nets in any estuary or river formerly defined by the Commissioners of Fisheries. Bag-nets may be abated in any river or estuary defined by one set of Commissioners or the other. This is the only construction which will give effect to the plain words of section 3, "*as such river has been defined by the Commissioners of Fisheries, or shall be defined by the Special Commissioners.*"

There is not the least reason to suspect that the Special Commissioners will decline to adopt the definitions of their predecessors in office where such *have been made*. In other cases they will themselves define, *i.e.*, mark out the mouths of rivers and estuaries. In the ordinary sense of "definition," *i.e.*, the legal meaning of the word, the 1st clause of the 13th & 14th Vic. c. 88, has fixed the sense of those terms which the Special Commissioners are not at liberty to depart from. The latter portion of the 3rd section of the Act 26 & 27 Vict. c. 114, providing that no penalty should be incurred if the bag-net was removed *within fourteen days after the passing of the Act*, if any thing were wanting to indicate the true construction of the earlier portion of the same section, seems conclusive on the point: the Special Commissioners have not as yet (21st Sept.) been publicly announced; their labours therefore have not commenced, and section 47 partially suspending its operation to the end of the present fishery season cannot alter the plain meaning and construction of the section itself.

Against such an abuse of trust a sufficient guarantee exists for the faithful execution of the Act, in the pledge of government that the Commissioners should be impartially selected, and in the services of Mr. Thomas F. Brady being secured as secretary: that officer has had great experience in the working of the former Fishery Acts, and had been much consulted in the passing of the Act of 1863. So far as his judgment or opinion can influence the labours and decisions of the Special Commissioners, the public may be assured no injustice will be perpetrated. The public

have also the remedies provided in section 5, the subject of the following chapter, which comprehends all "fixed engines" wherever placed, and includes the bag-nets referred to in section 3, as well as other engines. The alarm, therefore, as to the probability of bag-nets being saved in some places, by a capricious, a partial, or in homely language, a corrupt exercise, by the Special Commissioners, of the large powers and great trust reposed in them, seems completely groundless.

VII. Section 4 continues, in the same spirit, as section 3, to confer on, or rather to "declare," large powers to be vested in the public, to prevent most effectually for the future the springing up or growth of abuses, from the increase in the number of "*fixed engines*." Under section 3, however worked, numbers of bag nets, 71 of which are in the Shannon estuary, must be swept away. Under section 4, no new ones, or any other fixed engines, can be erected. It enacts that no "fixed net" (a) that was not *legally in use* for catching salmon or trout during the open season of the year 1862, shall be placed or used for catching salmon or trout in any inland or tidal waters.

It then provides that any net placed or used in contravention of this section, shall be deemed a common nuisance, and may be taken possession of or destroyed: that any net so placed or used, and any salmon taken by such net, shall be forfeited; and in addition, that the

(a) Including under this term "head-weir," sec. 44, specially excepted by the 5th and 6th Vict., c. 106, s. 25, and *doubtfully* included, section 1, 13 & 14 Vict., c. 88.

owner of such illegal net shall incur a penalty of not less than five pounds, and not exceeding twenty pounds.

VIII. The construction of this section, and the powers conferred by it on the public of righting themselves, and summarily destroying all new fixed engines erected at any time after the expiration of the fishing season of 1862, are precisely similar to the effect and construction of section 3. Section 4 is almost in the same words as the first half of section 11 of the English Act, 24th and 25th Vict., c. 109, under which, as has already been stated, it has been decided that *any one* may destroy a fixed engine, and that it needed no proceedings by conservators, magistrates, or other persons, to authorise the summary destruction of illegal fixed nets.

The remedies are, as in section 3, cumulative—the fixed net may be destroyed by *any one*; the salmon and net may be forfeited; and penalties imposed by proceeding before magistrates; and the Commissioners, under section 5, may abate it. The owner may be also indicted. No legislation could more effectually secure the public against the *increase* of any kind of fixed engine, bag net, stake or head weir, or any fixed net, within the sweeping and useful definition of clause 1 of the 13 & 14 Vict., c. 88. (a) If this clause is not effectual, no legislation can be so for the purpose.

(a) It will be useful to append section 11 of the English Act, 24 & 25 Vict., c. 109, under which the English public “have the pluck to right themselves,” and have been held by the English Courts justified in doing so.

Section 11—“No fixed engine of any description shall be placed or used for catching salmon in any inland or tidal waters, and any engine placed or used in contravention of this section may be taken

possession of or destroyed; and any engine so placed or used, and any salmon taken by such engine, shall be forfeited, and in addition thereto, the owner of any engine placed or used in contravention of this section, shall, for each day of so placing or using the same, incur a penalty not exceeding ten pounds; and for the purposes of this section, a net that is secured by anchors, or otherwise temporarily fixed to the soil, shall be deemed a fixed engine; but this section shall not affect any ancient right or mode of fishing as lawfully exercised at the time of the passing of this Act by any person, by virtue of a grant, or charter, or immemorial usage, provided always, that nothing in this section contained shall be deemed to apply to fishing weirs or fishing mill dams."

No distinction whatever can be made between the powers conferred on the public by this section, and sections 3 & 4 of the Irish Act of 1863, the subject of this chapter. The case of *Williams v. Blackwall* makes the plain words of both Acts still clearer as to their object and effect. The English public are acting on the declaration of right thus given to them. A bench of weir owners even could hardly decide against the public now.

"*Field*," 5th September, 1863.

"STAKE WEIRS IN ENGLISH SALMON RIVERS.

"We insert a short report of a decision at Liverpool assizes, as it is of much importance to the fishing interest. It decides the illegality of stake or Scotch weirs, though they may have been in use for forty or fifty years, and that they are not saved by the proviso to the 11th section of the Fishery Act, which exempts from prostration "*ancient modes of fishing*." A model was furnished by the Fisheries Preservation Association of London, of a stake net or Scotch weir, which was of much importance on the trial, in illustrating to the jury the operation of this destructive engine. Mr. Ffennell, one of the Inspectors of Fisheries, was examined, and explained the mode by which the fish were captured.

'*WILLIAMS v. BLACKWALL*

"This was an action of considerable importance to the proprietors of fisheries, being an action by the proprietor of a fishery in the River Conway, against the defendant (who was acting under the authority of the conservators of the Conway under the Salmon Fishery Act,

1861) for having cut down and destroyed a stake net set up by the plaintiff at the mouth of the Conway.

'The Attorney-General for the County Palatine, Mr. Brett, Q.C., and Mr. J. A. Russell were for the plaintiff; Mr. Mellish, Q.C., and Mr. Milward for the defendant.

'This case, which threatened to be of very considerable duration, was, as the learned judge remarked, by the admirable manner in which it was conducted by the counsel, eliminating everything apart from the main question, very materially shortened.

'The substantial question raised was whether this fishery had been carried on in the mode in which it is now carried on from time immemorial, or whether it had been substantially altered. The defendant justified the destroying the nets, &c., under the Salmon Fishery Act, and the plaintiff replied that in his case the fishery came within the exception of the Act protecting fisheries carried on in the same mode in which they had been carried on from time immemorial.

'On the part of the plaintiff deeds were produced, showing that the persons under whom he claimed had exercised a right of fishing from the year 1730 by means of a weir which it was said was similar to the one now in use, the present mode of fishing being by means of a Scotch stake net.

'On the part of the defendants evidence was produced to show that the mode of fishing was substantially altered from the ancient mode.

'The jury returned a verdict for the defendant, finding that the mode of fishing had been substantially altered; and consequently that Blackwall was justified in destroying the net.'" The legal right to destroy was not denied.

"**STAKE NETS.**—On the 13th inst. Lord Lonsdale's tenant at Salmon Hall, for his fisheries on the River Derwent, placed a stake net on the north side of the mouth of the river, and upon the site where the stake nets used to be placed before the passing of the Fisheries Act, 1861. We had hoped from the fact of their being discontinued from that time till now, that we had seen the last of them. On inquiry from several legal gentlemen, I hear that if Lord Lonsdale is, as he appears to be, determined to defend an action brought against his tenant, and to carry it from court to court by appeal, the costs

would amount to several hundreds of pounds, aye, even to thousands. We naturally feel indisposed to fight an opponent so wealthy and resolute, though we intend to bring his tenant, Mr. Walker, before the magistrates. I shall take care to forward you a report of the proceedings, and should they not cause them to be abandoned I shall perhaps ask your aid to lay before the public the facts of this case, which will, I am sure, appear very peculiar and interesting. I may state that, at Mr. Walker's own suggestion, I caused summonses to be issued, and obtained a conviction against certain stake net fishermen who last year carried on their illegal practices within four miles of the place where Lord Lonsdale's stake nets are now fishing. The main cause of the almost total destruction of salmon in this magnificent river was stated by the Commissioners in 1860 to be these very stake nets; and it will be hard indeed if now, when the river is just beginning to recover through their disuse, and by the united efforts of the upper proprietors for the protection of the breeding fish, we should again find the old modes of fishing resumed; for it is clear that others besides Lord Lonsdale will replace stake nets in the tide-ways, and sweep the fish before they reach the rivers. I should feel obliged by suggestions from any of your correspondents upon the best means of determining the point of immemorial usage with regard to stake nets. My own opinion, as well as that of the Inspectors of Fisheries, is that their introduction into England is of too recent a date to bring them under that most injurious proviso contained in the Act of 1861 respecting ancient modes of fishing—"by virtue of grant, charter, or immemorial usage."—CONSERVATOR.—['Conservator' has a very easy remedy. The same thing was attempted on the Conway lately. The conservator there went, with assistance, and summarily destroyed the net. The owner of the net brought an action for damages, and the judges held that the conservator was perfectly justified in destroying the net. The report of the case 'Conservator' will find in THE FIELD of May 23 last; and if he will write to Mr. Sharpe, the lessee of the river, or to John Blackwall, jun., Esq., of Kendle House, Llanrwst, no doubt they will furnish him with the particulars. We do not suppose for a moment that Lord Lonsdale is privy to so disgraceful a proceeding, as it is scarcely likely that a gentleman of his position would deliberately, in direct contravention of a law so lately passed for the improvement of the rivers

and the benefit of the public, set up an engine which is neither more nor less than a public robbery. Why has not 'Conservator' applied to the Fishery Board at the Home Office for advice? He has been very badly advised, and has been alarmed by a bugbear in the wealth, &c., of his adversary. The Conway case has just been tried again at Liverpool assizes, as will be seen by a report in another column. Mr. Sharp was once more justified in the course he had taken.—Ed.]”

The legal right *of any* to *destroy* all nets placed contrary to section 11, was decided in the Court of Exchequer, as cited *ante*, 32 L. J. N. S., Ex., 174. The *trial* of fact is reported in the above extract from *The Field* of September 5, 1868.

CHAPTER IX.

“FIXED-NETS” SINCE 1862 AND DUTIES OF SPECIAL COMMISSIONERS UNDER ACT OF 1863, AS TO.

I. Had the Act of the present year contained only the third and fourth sections, which have been considered in the preceding chapter, the benefit to the public, *if they choose to avail themselves of it*, would be immense; but further and more effectual provisions have been made which, if properly carried out by the Special Commissioners, *aided* by the public, without whose co-operation the Special Commissioners will be almost powerless, leave further legislation on the subject of fixed-nets quite unnecessary.

II. The powers of the public as to fixed engines, are declared in sections 3 & 4; the power and duties of the Commissioners in sections 5 & 6.

The 5th section, large and most comprehensive in its operations also enacts that the “Special Commissioners *shall abate and remove all fixed-nets (a) erected or used for catching salmon or trout in Ireland that are in their judgment injurious to navigation; and shall inquire into the legality of, and if satisfied of their illegality, remove all such other fixed-nets erected or used for similar objects as are in contravention of any Act of Parliament or law in force in Ireland.*”

(a) Including “Head-weirs,” sec. 44, and all kinds of devices called fixed-nets, fixed-engines, see 13 & 14 Vic. ch. 88 sec. 1.

The 6th section enables the Special Commissioners to give a certificate that a fixed net has been erected by a person having the particular estate before adverted to, as alone giving even a colourable title to erect a stake-weir under the 5 & 6 Vict. ch. 106; but this certificate is not to render any net legal that would otherwise be illegal by reason of its being injurious to navigation, or which is a common nuisance to the public right of fishing, or which may be otherwise in violation of common law or any Act of Parliament.

The 46th section also provides that nothing contained in that Act shall be deemed to recognise as legal, or to confer any title on any person in respect of any fixed net or fishing weir that is in contravention of any Act of Parliament or of the Common Law in force in Ireland.

There are thus two most distinct legislative recognitions in this Act, in addition to that contained in the 13 & 14 Vict. ch. 88, sec. 19, of the law as laid down in the former chapters from the decisions of eminent judges, that no fixed engine which is injurious to navigation or the public right of fishing, or to the passage of fish, is legal. The clause in the Act of 1850 was passed for the distinct purpose of thus declaring and settling the law as previously pronounced by the judges, and which was brought under the notice of the select committee of 1849.

III. The duties of the Commissioners as to inquiring into and abating all fixed nets or engines being thus clear, the mode of executing this very important portion of their functions is prescribed by section 13 of the Act of 1863 and 14th of the Act of 1850, 13 & 14 Vict., c. 88.

Section 13 of the 26 and 27 Vict., c. 114, enacts that before removing any illegal net or illegal fishing-weir the Special Commissioners shall take the same proceedings as to summoning the parties interested in such net or weir, and as to hearing such parties and any evidence they may produce, as the Commissioners of Fisheries were required to take on application made to them to remove illegal fixed engines, but a summons issued by the Special Commissioners is to be deemed equivalent to the very strict and formal complaint required to be made to the Commissioners of Fisheries, to enable them to inquire into the legality of, and abate those nuisances.

The preliminaries required by section 14 of the 13 & 14 Vict., ch. 88, are a summons by the Commissioners to be served or posted at the known residence of the person therein mentioned, requiring the parties, if they can be found, who erected, or used, or maintained the illegal weir, to appear before them at a convenient place and time within the county adjoining the shire on which the fixed net is placed; they are then to hear all such pertinent evidence as may be adduced before them by *any one*, complainant or party summoned, or adduced at the instance of the Commissioners or of the public. After proof of the summons, &c., hearing the evidence, the order for abatement is to be made in the manner specified in section 36 of the Act of 1850, declaring the fixed net a nuisance or illegal, and ordering its abatement at the expense of the parties erecting or using it (a); they have

(a) Sec. 14 of 13 & 14 Vict., c. 88.

also an ample power of awarding costs, including witnesses' expenses, (a) but as the inquiries will be general, into the legality of all fixed engines in each district, and will be initiated by them, the provisions as to awarding costs may not immediately be called into operation. The Commissioners are to institute inquiries for the benefit of the public, and all persons presenting themselves on behalf of the public, or persons interested on that of the weir owners, will be heard as in ordinary cases of public inquiries, all parties attending defraying their own charges.

The special Commissioners will perhaps visit the principal estuaries of Ireland in regular succession, in order of their importance, make a general inspection of the fixed engines and their situations, and afterwards fix such a time and place for hearing as will enable any one interested to appear before them; then give public notice by advertisement and posted notice of the time and place fixed for all persons to attend, and issue and send their summonses in a general form to all the owners of fixed nets in the locality. Such a mode of proceeding will tend to expedition; there need not be in form a special proceeding in each case, but the same witnesses may be examined for all the cases brought before them. The adjudications, however, must be distinct.

IV. Supposing then, the Commissioners named, and at their work of restoration of public rights, or as some may term it destruction of private rights, their duty will be to ascertain the illegality of any fixed net, and

(a) 13 & 14 Vict. c. 88, sec. 48 & 54; 26 & 27 Vict., ch. 114, sec. 15.

then to abate it. Here, then, reference must be made to the former chapters to decide what is an illegal fixed net or weir, either as the law stood in 1862, or as it has been since altered, or rather declared by the 3rd and 4th sections of the Act of the present year.

An enumeration of the modes *in any one of which* a fixed net becomes and ought to be held illegal, and removed by the special Commissioners, will facilitate the public in judging of the best manner to assist the labour of the Commissioners in their useful works of renovation and prostration, commencing the enumeration with the simplest case. A fixed engine is clearly illegal, and should be prostrated.

1. If it is erected since the close of the fishing season of 1862. (a)

2. Or is a bag net in any river or estuary defined by the Commissioners or special Commissioners. (b)

3. Or is a bag net within three miles from the mouth of any river defined as in 2. (c)

4. Or if any fixed engine is in the tidal parts of a river less than three-fourths of a mile broad at low water of ordinary spring tide. (d)

5. Or is within one mile inward or seaward of the mouth of any river, which at low water as in 4 is less than half a mile broad. (e)

6. Or if it, or any work connected with it, extends below low water mark at ordinary spring tides. (f)

(a) Sec. 4 Act of 1863.

(b) Sec. 3 Act of 1863.

(c) Sec. 3 Act of 1863.

(d) Sec. 22 of 5 & 6 Vict., c. 106; s. 19 of 26 & 27 Vic., c. 114.

(e) Same sections, and sec. 2 of 8 & 9 Vict., c. 108

(f) Sec. 26 of 5th and 6th Vict., c. 106.

7. Or if it is erected or used by any one not an owner and occupier of land adjoining the sea shore; renting the shore will not do. (a)

8. Or if the person erecting the weir or using it, is a tenant of land, but does not hold and occupy under a lease, of which not less than fourteen years was unexpired at the time the weir was erected. (b)

9. Or if the party erecting the weir being a tenant under any lease for a life or lives determinable, or for years of which less than 100 was unexpired, has erected the weir without the *previous* written consent of the chief landlord or lessor. (c)

10. Or if the stake weir is not constructed according to the provisions of section 20 of 5 & 6 Vict., c. 106, with the proper intervals between the bars, &c.

11. Or if it is not constructed according to the directions in section 26 & 38 same Act, so as to have the clear openings thereby required during the close season.

12. Or if the weir is, in any degree, injurious to navigation. (d)

13. Or to the public common right of fishing. (e)

14. Or is an obstruction to the passage of fish.

15. Or if a weir had been ordered to be abated, or had been so, and had been re-erected by the same person, or by anyone else, in the same place or in

(a) Sec. 19 of Act of 1842; 13 & 14 Vict., c. 88, s. 16.

(b) 5 & 6 Vict., c. 106, s. 19; no consent makes this legal.

(c) Same sections *ante*, 51, 52.

(d) Sec. 5 of Act of 1863, and 21 of Act of 1842.

(e) *Ante* chap. 5. As to all these cases, secs. 5 & 6 of recent Act; sec. 19 of Act of 1850.

or adjoining, or contiguous to the same place where the illegal weir had stood. (a)

16. Or, finally, if it is in any of the rivers or estuaries of the Suir, Nore, or Barrow, or of the six counties named in the Statute 28 Hen. 8, c. 22; 5 Geo. 2, c. 11.

If the weir is open to objection on any one of the foregoing grounds it is illegal, and must be removed by the Commissioners. There are, it is believed, very few weirs not liable to be removed on several of the grounds just enumerated; and a weir that is not open to objection on any one of these may be suffered to remain without detriment to the public interests.

The fact that a weir was established more than forty years before 1842 cannot save it if it infringes any one of the preceding rules; if it does, *delenda est*. The Commissioners, in their annual reports, frequently lamented the increase of illegal weirs (b), and their inability to deal with this abuse, as they could not originate or initiate proceedings against the offenders. The *public* were required to make a formal written complaint to them of the illegality of any weir, pointing out spe-

(a) *Vide* evidence of Mr. Ffennell Com. 1849; 238, 214 *et. seq.* A most important provision of the 13th & 14 Vict., c. 88, s. 17, which was rendered necessary by the mode in which the full effect of conviction was evaded. If a weir was prostrated, some one erected it again in or near the same place; another prosecution was then necessary. This provision was recommended by the Committee of 1849, and adopted the year following—long dormant it may now be useful.

(b) The Report of 1860, p. 7. "The Bride and Blackwater continue to be studded with weirs *most of which, it is believed, are illegal,*" and other passages.

cifically how it infringed the law (a). But the public, and even the parties most interested, knew not how to put the Commissioners in action; few even had the Acts of Parliament on the subject. Many could not read them if they had, or write their complaints. They felt the injustice but could not state it properly, and the Government departments were only too happy to shelter themselves under the apparent acquiescence, but in reality the ignorance and poverty of the country. Now the Special Commissioners must originate the proceedings. This is a wise alteration.

V. The Special Commissioners must all sit together to hear the complaints as to illegal weirs (b), but the decision of any two binds all. Their warrants for the abatement of such weirs are to be signed by them, and bear the Commissioner's seal. Any order of the Special Commissioners may be appealed from, whether it be an order dismissing a complaint of an illegal weir or ordering its abatement (c). The appeal is to be to the Court of Queen's Bench in Ireland by a special case settled by the Commissioners or any two of them, of whom the legal Commissioner is to be one, and must be made within seven days from the day on which the decision appealed from is given, and must be made in the mode and with the formalities specified in section 14.

The Commissioners may, if they think the application to appeal frivolous, refuse to entertain it. They

(a) See Report for 1862, p. 5. 8 & 9 Vict. c. 108, s. 3; 13 & 14 Vic. c. 88, s. 14.

(b) Sec. 35.

(c) Sec. 14.

then must give the applicant a certificate stating the grounds of refusal. (a)

The decision of the Queen's Bench is to be final, and so is the decision of the Commissioners, and it is not examinable by *certiorari* or otherwise (b).

VI. The Special Commissioners can provide for the expense of the removal of any illegal weir. Their warrants must be obeyed by the police, and ample assistance can be procured, the expense of which may be charged against the offender (c).

VII. There is thus placed in the hands of the Special Commissioners the most ample power to deal with those nuisances and destructive engines; and if they do their work effectually, not merely will their future increase be prevented, but the number of those now used be reduced to such a very limited number, and in such localities, as not to be in any degree detrimental to the fisheries.

But the public must be cautioned that without their own energetic co-operation with the Special Commissioners, the best intentions on the part of those functionaries will be unproductive of the least advantage. The public must be virtually complainants, though a

(a) Sec. 14.

(b) Vide secs. 38 and 40, 26 & 27 Vict. c. 114. Indeed, whenever Commissioners are given by Act of Parliament power to decide on any matter, their decision is conclusive.—*Moody v. Thurston*, 1 Str. 481; *Allen v. Sharp*, 2 Ex. 352; *Rutledge v. Hood*, 4 L. J. 2.

(c) Secs. 15 & 44 of Act of 26 & 27 Vict. c. 114; sec. 14, 18 & 14 Vict. c. 88. All the Fishery Acts constitute one code, to be construed and read together, and this independently of any positive provision on the subject such as is contained in sec. 55 of Act of 1850, and 44 of Act of 1863.

mere letter from anyone requiring them to enquire into the fixed nets in the district will suffice. They must take pains to furnish documents; to attend with and as witnesses; to procure, for example, evidence and witnesses on such points as the following: the erection of the weir after the fishing season of 1862; that one near it had been formerly abated or adjudged illegal; that it is injurious to navigation or the public right of fishing; that the person erecting it was only tenant from year to year, or had not the chief landlords' assent. All the necessary facts to enable the Special Commissioners to act, must be proved for them by the public. Facility has been given by the Commissioners having annexed to their Report of the year a map showing the position of all fixed engines used during the season of 1862. They can also furnish lists of the weirs formerly abated or adjudged to be illegal. The various reports by Captain Frazer and others will show the injury of these weirs to navigation; and if with such opportunities available and placed within their reach the public will not afford the necessary assistance of every kind to the Special Commissioners, their future complaints will be unavailing. They will be not objects of compassion but of contempt.

Let every one of the public who even feels the least interest on the subject act for himself on the very practical advice of Miles Standish,—

“That’s what I always say, if you wish a thing to be well done,
You must do it yourself, you must not leave it to others.”

In short, if they will not exert themselves and put their own shoulders to the wheel, vain will be all cries to Jupiter.

CHAPTER X.

FISHING WEIRS—QUEEN'S GAPS.

I. The "redress of grievances" contained in the sections (a) of the Act of 1868 considered in the two preceding chapters contain what, in current cant, may be termed a "liberal measure of reform;" but the legislature has gone still further in its anxiety to develop the resources of Ireland, and arrest the progressive destruction of its valuable Salmon Fisheries, by ensuring sufficient Queen's Gaps being made in all "fishing weirs" across rivers.

II. It is more than probable that in the very remote times, when the first weirs were originally erected under grants from the Crown, they contained sufficient gaps to allow the free passage, at all times of the year, of a fair share of the fish to the upper proprietors on the river banks; but the weir owners soon began to improve them and contract the passage, to add to the height, and, consequently, to the difficulty of salmon getting over them; and some even began to erect weirs on rivers without any title or authority whatever. Hence it became necessary to check this infringement of public rights, and the two clauses of Magna Charta referred to in an earlier chapter, (b) confirmed and strengthened by subsequent Acts, and still unrepealed,

(a) 3, 4, 5 & 6.

(b) *Vide ante*, chap. 3, pp. 24, 25, *et. seq.*

were passed. The enhancing or improving weirs was expressly forbidden, and none save those in existence before the time of Henry II. could be legally maintained. That would be "putting rivers in defence," (a) and "erecting weirs," (all of which were commanded to be prostrated after Magna Charta,) which is a direct violation of the two chapters, 16 & 23 of the Great Charter. Accordingly it was held by the Court of Queen's Bench in England, that it was unlawful and a public nuisance to convert an ancient brushwood weir into a stone weir, a more effectual obstruction to the passage of salmon than the old, and that time could not hallow or sanction this public nuisance (b). This law and the decision just quoted, equally applied to Irish weirs, but was not equally enforced, (c) and the owners of weirs in Ireland enlarged and added to them, and as it suited their convenience and cupidity, built up the "King's Gaps," as such open passages for salmon in the ancient fishing weirs were termed. From the earliest times a gap existed in the great Lax or Salmon weir at Limerick, called in Irish "Monerea," anglice "King's Gap," and other weirs possessed similar gaps within the memory of persons yet living, though they have been since closed. (d) But as in the case of stake weirs and fixed engines, private enterprise, i.e., the desire of gain

(a) *Riparia in defenso.*

(b) See *Weld v. Hornby* 7, East 197, note 31, 5.

(c) There is not the least doubt of those chapters of M. C., and the Act of Ed. 4 being extended to Ireland by Poynings Act, 20 Hen. 7. *Malcomson v. O'Dea*, in the House of Lords, and the Judges there assume it to be quite clear.

(d) *Vide ante*, and as to Ballina, *Field*, of 23rd May, 1863, which seems to leave no doubt as to it.

proved more than a match for *laws* unexecuted, and for a disunited and torpid, though aggrieved public.

It was quite illegal to *enhance* or improve fishery weirs, though they might have been ancient and legally granted; it was illegal and a public nuisance to close up the free gap, and it was illegal to erect new fishing weirs, but the facts still remained; new weirs were erected, free gaps were closed, and old weirs made more destructive by improved catching powers and greater obstacles to the ascent of salmon. Old laws had been ineffectual from want of public spirit, and new laws were passed, as if in derision, or on the supposition that laws of any kind were self-executing.

III. The importance of having free gaps in all weirs was recognised by the Irish Legislature; and two statutes were passed in the reign of George the 3rd, one of which at least seemed to make a liberal provision for this desirable object. By the first, (a) a twenty-one foot gap passage was required to be left in every weir in the deepest part of the river, under a penalty of £20. But this provision was rendered quite nugatory by a saving contained in the subsequent Act (b), which provided that it should not extend to any weir held uninterruptedly for thirty-one years, or under patent or charter. Thus the public rights were surrendered to the apparent respect or zeal for preserving property held under grant or charter. Violations of law became sacred acts, and encroachments (c) became "property" in the eyes and language of the offenders.

(a) 23 & 24 G. 3, ch. 40, sec. 11.

(b) 26 G. 3, c. 50.

(c) Lord Ellenborough's words.

In the year 1842 there was scarcely a river, save the Shannon, where a free gap had been formerly erected, that had not been effectually sealed by closing the gap and raising the height of the weirs, some of them being at the same time used as mill-dams. For some rivers there had been special legislation: as for the Suir, Nore, and Barrow, in which all weirs were to be prostrated and convenient gaps were to be made in all mill-dams (a); but these and all other provisions for the protection of the public were disregarded. The justices by whom the public rights were to be guarded were often themselves weir-owners and millers (b). The consequence was that the grievance was at its height in 1842. The law as to free gaps was rather intricate. The private parties who were the offenders were enriched by the violation of the law, and the spoiled public had not wealth or energy to engage in law-suits with their rich and powerful oppressors. It was necessary therefore to appear to legislate for the beneficial object of providing Queen's gaps in all fishing-weirs; and this was done by the Act of 1842.

IV. The first portion of the 41st section of the 5 & 6 Vict. c. 106, seemed to provide in the most general and generous manner for the formation of a free or Queen's gap in all weirs, dams, or dykes, of what nature or kind soever which should extend more than half way across the river. The breadth was to be one-tenth of the stream and a varying minimum was fixed suited to the breadth of the river. It also guarded against the dimi-

(a) Called "ponds" in the Act, i.e., ponds back the river.

(b) Vide Lord Mountcashel's plain spoken evidence, Committee, 1849, 193-4, and other places.

nution of any existing gap, and imposed severe penalties on any breach of its provision. A most liberal and stringent, and useful clause, *but* (a) for the proviso which rendered it entirely nugatory. This proviso, under which every weir-owner asserted that his case was comprehended, was in effect, "That the person entitled to or lawfully possessed of any weir, dam, or dyke in which by law no free or Queen's gap could, previous to the passing of the Act, be enforced to be made or widened, should not be liable to have his weir interfered with, until his claim for compensation should be settled and disposed of, and the amount paid or tendered according to the subsequent regulations of the Act. A subsequent clause, sec. 56, excepted even mill-weirs legally used for fishing, from the necessity of having a Queen's gap. It may be therefore easily conceived that the apparently wise legislation for enforcing Queen's or free gaps contained in the 41st and many subsequent clauses of the Act of 1842 was not productive of much benefit to the public. Indeed the Commissioners of Fisheries, in their Report for the year 1849, say these provisions were altogether "a dead letter," as there was no compensation fund provided from any source for the weir-owners.

V. The provisions for making Queen's gaps contained in the Act of 1842 being thus far ineffectual, some attempt to improve them was made in the 13 and 14 Vict. c. 88, secs. 22 to 31 (b). The 22nd section gave power to the Commissioners to make the free gap,

(a) "I do not like your *but*, it doth allay the good precedent."

(b) 1850.

in any case where the party was compellable to make or maintain it, without compensation paid to him conformably to the requirements of sec. 41 in the Act of 1842; and also enabled them at any time, on security being given for costs by the person putting them in motion, to compel free gaps to be made, and compensation to be assessed and paid to the weir-owner. Again, the millers got a clause (32) inserted for their protection; but it was unnecessary. The legislation of 1850 was as ineffectual to redress the long-tolerated abuse and injuries produced by the stone weirs as the Act of 1842.

Some useful powers were, however, vested in the Commissioners by the Act of 1842, where a free gap legally existed, or could before the Act have been enforced. There were indeed many cases where, if the question was tried, the right to enforce a Queen's gap under the former repealed Acts must have been determined in favour of the public, but no funds or persons were forthcoming to try the existence of the right, and the weir owners rejoiced in complete immunity; but the powers given to the Commissioners of enforcing a free gap conformable to the provisions and "specifications" in sect. 41 were exercised very happily by them in the year 1861 in the case of the lax weir at Limerick. (a) On a complaint made by the conservators, of the gap in that weir requiring alteration, the Commissioners held an inquiry, and decided that the position of the free gap, should be altered, and made to

(a) *Queen v. Commissioners of Fishery*, Report for Limerick Conservators.

conform to the requirements of the statutes. A writ of prohibition was applied for, and the Court of Queen's Bench, on the 12th June, 1861, pronounced a very clear and able judgment in favour of the Commissioners' power thus to alter or modify existing Queen's gaps, and to make them accord with the regulations of the statute. The Chief Justice Lefroy, after going through the provisions of the sections of the two Acts of 1842 and 1850, said that the decision of the Commissioners was a *judgment in rem*, and entitled to authority as such, and that they had complete jurisdiction and power to make it. This is a useful decision; it settles the mode in which all the Fishery Acts are to be construed, that is as one code, (a) and the provisions of one Act are to be read whenever they can be consistently so read as imported into the latest on the subject, and that the power of the Commissioners extends in fact to making and keeping from time to time the free gap conformably to the intentions of the Legislature.

VI. This was, however, only an isolated instance of the utility of some of the provisions in the Acts of 1842 and 1850, as to Queen's gaps where free gaps before existed, the title, or alleged title or claim of the weir owners to compensation before making one wholly new, having rendered the Act as to new free gaps quite nugatory. The experience of the Messrs. Ashworth (b) would have shown that opening a Queen's share or gap was very reasonable instead of injurious to the salmon fisheries, and that consequently no damage

(a) C. J. Lefroy. Even independent of any clause to that effect.

(b) *Vide* evidence of Mr. Ffennell, Report Committee, 1862.

was done, and no compensation was fairly payable, but a claim would most certainly be always made, and the power of making it was fatal to the working of the Queen's gap clauses.

VII. The Act of 1863 has dealt with this important portion of the remedial measures, necessary to restore the Irish salmon fisheries, in a bolder and wiser spirit. All evidence was in favour of the general utility to the public, and even of the special advantage to the weir owners, of having free gaps of sufficient width in every salmon river. The English Act of 1861, 24 & 25 Vic. c. 109, (a) provided for free gaps equal to one-tenth of the breadth of the stream, but not to exceed forty feet, in all fishing weirs extending more than half way across any stream at its lowest state of water, and no compensation was given to the weir owner.

Twelve months were allowed to construct free gaps conformable to the directions and requirements of the Act, and this precedent of doing justice to the public, and conferring a boon on the weir owners without the public being also compelled to pay them for receiving a benefit, was happily adopted by the Legislature in the year 1863 for Ireland.

VIII. Section 7 empowers and directs the Special Commissioners to enquire into the legality of all fishing weirs in Ireland, and to remove such as are in contravention of any Act of Parliament or law in force in this country; but where its illegality consists solely in not having a free gap as required by law, the Commissioners are not to remove it, if a satisfactory undertaking is given to them, that a legal free gap

(a) Section 27, *et seq.*

shall be made within a limited time, and such free gap is made accordingly. Very many of the fishing weirs in Ireland must fall before this inquiry by the special Commissioners, if properly conducted, and if their labours are helped by the public. The inquiry is, by section 13, to be conducted in the same way as the inquiry into the illegality of fixed nets. The law as to those fishing weirs has been before stated, and so closely resembles that as to "fixed engines in tidal waters," that it need not here be again minutely set forth. (a) It will be sufficient to recapitulate some of the requisites to the legal existence of a fishery weir in any river.

1. It must have been erected under a title derived from the crown before Henry the Second's reign, or by a re-grant afterwards of the Crown title, revested in it by forfeiture or otherwise. (b)

2. Any addition or enhancement of the weir, *e.g.*, adding to its height, closing up former gaps, (c) converting the weir from a brushwood into a stone weir, makes it illegal.

3. All mere modern fishing weirs, either in "several fisheries" or elsewhere, must fall. No prescription will be valid against the public, which does not from its long continued existence, warrant the presumption of an *original* valid grant from the Crown anterior to Magna Charta, which prohibited the erection of all future weirs, and this was extended to Ireland in the

(a) *Vide ante* chap. 2 & 3, p. 24, 25.

(b) Chapters 2 and 3.

(c) P. 25. This, however, will not entitle the special Commissioners to prostrate at once, but only to take security that a free gap should be made. If not given, or the gap not made, it can then be abated.

reign of Henry the III, or, at the latest, in the tenth year of Henry VII. (a) Thus fishing weirs may be much diminished in number, and they were yearly becoming nearly as great nuisances to the public as fixed engines in tidal or navigable waters. They may be occasionally impediments to navigation also. A full inquiry into their legality cannot fail to result in the abatement of many of them. Section 11 assumes that the only legal fishing weirs are those held under charter or patent. Section 8 subjecting persons keeping up illegal weirs after notice to a heavy penalty is a useful auxiliary to the power conferred by section 7 on the special Commissioners.

(a) A fishing weir is one mode of enjoying a legal "several fishery," and that this cannot be of modern creation, so as to entitle the party to a weir, contrary to Magna Charta, 12 Edw. 4, see *Weld v. Hornby* (7 East, ante); the judgment of the House of Lords in *Malcomson v. O'Dea* is precise. This was an Irish case relating to the weir and several fisheries on the Shannon. "That a right to a several fishery (and of course to a fishing weir in it) may lawfully exist is clear. The soil of navigable tidal rivers like the Shannon, so far as the tide flows or re-flows, is, *prima facie*, in the Crown, and the right of fishing *prima facie* in the public; but for Magna Charta the Crown could, by its prerogative, exclude the public from such *prima facie* right, and grant the exclusive right of fishing to a private individual, either together with or distinct from the soil; and the great Charter left untouched all fisheries which were made several to the exclusion of the public by act of the Crown not later than the reign of Henry the II." It will be observed that the judgment in this and all the recent cases, assumes that it is too clear for argument that Magna Charta as to Fisheries and weirs was extended to Ireland, and, therefore, the rules which would apply to test the legality of any river in England, apply equally here. Farther on the judges say, that if a fishery is shown to be modern, that negatives any presumption of an ancient legal grant as against the public.

IX. But some, perhaps too many weirs, may escape this trial and ordeal, and in them the Act of 1863 has provided for the erection, without any compensation whatever, of free gaps. By section 9—It is enacted that in every fishing weir there shall be a free gap in accordance with the following regulations :

1. It shall be in the *deepest* part of the stream.
2. The sides of the gap shall be in a line with and parallel to the direction of the stream at the weir.
3. The bottom of the gap shall be level with the natural bed of the stream above and below the gap.
4. The width of the gap in its narrowest part, shall not be less than one-tenth of the breadth of the stream, but the maximum required is 50 feet, the minimum allowable 3 feet.
5. Existing gaps are not to be reduced, or a smaller gap substituted, or any alteration made to reduce the flow of water through the gap.

When the breadth of the river at the place where any charter or patent fishing weir now exists shall not exceed 40 feet, and it might be inexpedient to require a free gap to be made, the Commissioners may, if they think fit, instead of such gap, direct, by their order, an extension of the weekly close time for a period of twenty-four hours. (a)

X. Where a legal free gap did not exist at the passing of the Act, the owner of the weir shall make a free gap conformably to the Act within twelve months, or be subject to a penalty of not less than £5 and not exceeding £50 for every day he makes default. (b)

(a) Sec. 11.

(b) Sec. 12.

“Where a free gap has been made in a weir, but the same is not executed in accordance with the Act, the owner shall incur a penalty not exceeding £5 a day for each day he is in default.” (a) It would seem that the owner of a weir in which a free gap existed at the time of the Act coming into operation, has no time within which to make it conform to the Act, but must alter it immediately. Some persons, however, think that the owner of such a weir has also twelve months within which he may make the alterations required to comply with the statute.

Other prudent provisions are contained in clauses 10 & 12 to which it may be well to direct attention. Section 10 directs the mode in which all fishing boxes and cribs in fishing weirs and fishing mill dams shall be constructed.

1. The upper surface of the sill shall be level with the bed of the river.
2. The bars upstream in the cribs shall be placed *perpendicularly*, and not nearer to each other than two inches, and shall be capable of being removed.
3. The boxes shall not be in any manner built over, or in any other manner hidden from public inspection.

The provisions in the Act of 1842, section 54, as to spur walls to fishing-weirs, and 56 & 57, as to obstructions and formation of fishing-weirs also apply to the Queen's gaps to be made under the Act of 1863.

Six months are allowed the owner of any fishing-weir for bringing the boxes and cribs into conformity with the Act, and his default subjects him to a mini-

(a) Sec. 12, par. 2.

mum penalty of £5, and a maximum of £20, for every day after the expiration of the six months during which the owner shall fail to comply with the provisions of this section. He is also subject to a penalty of not less than £1, or not more than £5, for every day he fails to *maintain* the boxes and cribs as before directed.

Paragraphs 3 & 4 of section 12 provide against the alteration of the bed of any river so as to reduce the flow of water through a free gap, and against the placing of obstructions, using contrivances, or doing any act whatever whereby fish may be scared or deterred from passing through the free gaps at all periods of the year, and against using nets or other engines within fifty yards above or below a free gap. Any offence against these useful provisions subjects the offender to penalties proportioned to the offence; and as the unfortunate lenity or laxity with which the Irish magistrates perform their duties was too well known, minimum penalties have been fixed by the legislature for the breach of any of those regulations. It is to be hoped that no future inquiry will disclose the melancholy facts stated on former ones, of crocodiles being placed in free gaps, of halfpenny fines recorded, and of habitual violations of the law in reliance on the magistrates' secret friendly sympathy or open countenance (a). Evasions by magistrates of regulations made for the public benefit can only be practised, when clear evidence is given them, by "dismissing" the complaint. And even *bas-*

(a) Some recent cases in the county of Waterford would seem to suggest the "vanity of human wishes" or hopes.

ket justices may at times feel that a friendly offender requires too much ; and " it is too bad " to ask them to pronounce them " not guilty," as the form of the dismiss runs (a) when his guilt is apparent to every one, and even admitted by the offender himself.

The useful regulations as to spur-walls and other obstructions contained in the earlier Fishery Acts 5 & 6 Vict. c. 106, secs. 54, 57, and others, extend to all free gaps and fishing-weirs, as all the Acts are to be read as one code : many of them will hereafter be more particularly noticed.

(a) 13 & 14 Vict. ch. 88, sec. 52.

CHAPTER XI.

MILL-DAMS AND OTHER OBSTRUCTIONS IN RIVERS.

I. It has been already mentioned that the influence of gentlemen in the milling interest had been strenuously exerted while the Act of 1842 was passing through Parliament, to mitigate or throw out any clauses which seemed to affect them. They had got mill-dams excepted from the Queen's gap clauses, and many other savings were inserted for their benefit; but some clauses still were permitted to remain, which, if properly applied, will have a great effect in removing the serious injuries to river fisheries caused by mill-dams and similar obstructions.

II. Useful powers were conferred on the Commissioners of Fisheries by the 62nd, 63rd, and 64th sections of the 5 & 6 Vict. c. 106, which enable them to make fish-passes over all existing weirs, whether for milling or other purposes, or over natural obstructions. These passes are to be made at the expense of the parties interested in the fishery of the river, and on their application. The exercise of these powers is, however, restricted by the condition that it is not to prejudice the drainage of the lands adjoining, or injure the navigation or effective water-power for mills. Provision too was made for maintaining a flow of water, over the fish pass, from six o'clock on Saturday afternoon to six

o'clock on the following Monday morning (a); and at all times when the mill is not at work; and for preventing the fish-passes being in any way used as a fish-trap or obstruction, by devices of any kind (b). Limited provisions too have been made to secure, by a grating placed at the top, the young of salmon and other small fish from being injured by descending or ascending artificial water-courses used for any purpose but for navigation, or to supply motive power to machinery (c); and when a turbine or other similar instrument is used, by a clause in the recent Act, (d) effectual means must be taken by placing a grating or other contrivance to prevent the fry, in their descent of the stream, from passing into the machine. This is a most useful provision. It was proved that immense quantities of salmon-fry were destroyed in their descent of the river Lee at the Cork water-works where a turbine is constantly at work. But this has, it is said, been of late years prevented. However, the clause may be usefully applied there or in other places. The violation of those clauses subjects the offender to heavy penalties.

III. All fishing in mill-dams and water-courses to or from any mill, or factory, or connected works, by nets or engines of any kind, save with rod and line, (e) is prohibited; and this prohibition is extended to all kinds of fishing, save by rod and line, within 200 yards above and below every weir used for mills or factories, or for

(a) Vide sec. 63, 13 & 14 Vict. c. 88, s. 39.

(b) 64.

(c) Sec. 74 of 5 & 6 Vict. c. 106.

(d) 26 & 27 Vict. c. 114, s. 30.

(e) 5 & 6 Vict. c. 106, sec. 75.

navigation (a). An exception in the 13 & 14 Vict. c. 88, preserving the rights of owners of a several fishery exercised for twenty years before 1850, is modified very much by sec. 16 of 26 & 27 Vic. c. 114, which prevents such owners and all others from fishing by boxes or in any manner, save with rod and line, at or within fifty yards above or below a mill-dam, unless such weir has an effectual fish-pass, with a sufficient constant flow of water passing through it, under a minimum penalty of £5, or a maximum of £20.

IV. If mill-weirs are used also as fishing-weirs, they come within 13 & 14 Vic. c. 88, s. 22, *et seq.* as to Queen's gaps, but not within sec. 9 of the 26 & 27 Vict. c. 114. The result, then, is that henceforth all fishing-weirs must have free gaps as stated in the preceding chapter; and all fishing *mill-dams* must have constantly an effectual flow of water through them (b); but a Queen's gap can be made even in fishing mill-dams in accordance with the provisions of the earlier Act 13 & 14 Vic. c. 88 (c) on payment of compensation.

Mere obstructive weirs can have fish-passes made in them.

V. The powers given to the Commissioners of making fish-passes over mill-dams and similar obstacles to the free run of salmon have been found useful; and facile passes have been made in the Bandon and other rivers which have much improved the fisheries in them. Fish-passes may be made in a very simple

(a) 13 & 14 Vic. c. 88, s. 87.

(b) Secs. 9 & 16, 26 & 27 Vic. c. 114, for milling or other purposes.

(c) Sec. 32, 13 & 14 Vic. c. 88.

and cheap, and yet effectual manner; and expensive masonry constructions, stairs, and similar works, are often found to be the worst forms for the purpose. There is in the recent English Salmon Fishery Act, 24 & 25 Vic. c. 109, a clause (sec. 11) similar to clause 16 of the Irish Act, prohibiting fishing at mill-dams unless a fish-pass is attached to the dam; and in a recent case (*a*) it was held that the prohibition was absolute, and that no ancient right of custom of fishing at the mill-dams entitled the proprietor either of the mill or of the fishery to use the dam to catch salmon, unless it had a fish-pass in accordance with the provisions of that section.

VI. By section 2 of the Act 28 Hen. 8, c. 22, relating to the Suir, Nore, Barrow, and Rye in the county of Kilkenny, anyone is authorised, with one of the sheriffs of the county, to make a convenient gap for the passage of boats, &c., in all mill-ponds in any of the said rivers. The mill-ponds here meant are the simple ones made by merely damming the river; and through all such obstructions a convenient gap made under the powers given by this Act will prove the most effectual fish-pass.

VII. All salmon-passes and fish-ladders must be at all times open to the inspection of the Commissioners, the conservators of the district, and of any person duly authorised by them or any of them (*b*).

VIII. Thus the legislature seems to have amply provided for the equal distribution of nature's supply of salmon between the upper and lower proprietors,

(*a*) *Moulton v. Wilkes*, 82 L.J., N.S., M.C., 164.

(*b*) 26 & 27 Vict. c. 114, sec. 31.

and for the protection of public and private rights of fishing. The abolition of all illegal fixed nets, the entire prohibition to erect any such devices in future, the opening free gaps in all fishing-weirs, and providing for effective fish-passes in all other obstructions, will afford such an amount of redress from former abuses and a check to future ones as may be well received by the public as a large and truly practical amelioration of the fishery laws of Ireland.

If the upper heritors, with such provisions made in their favour, do not exert themselves to carry out the law fairly, they only deserve the epithet applied to them in Redgauntlet, of "*clocking-hens* to hatch fish that folk below may kill and eat."

CHAPTER XII.

ANNUAL CLOSE SEASONS.

I. To "everything there is a season, and a time for every purpose under heaven—a time to be born, and a time to die; a time to kill, and a time to heal." Perhaps it was with reference to this decisive testimony from holy writ that our ancestors, so far back as the time of Edward the First, introduced a uniform annual close season in all the English rivers. They were then fond of dating all things with reference to certain religious feasts and saint's days, and a uniform close season for all Great Britain, however inconsistent with the habits of the salmon tribe, and which would be nearly as absurd as enacting that all corn should be cut on a certain day, had one advantage, that of ensuring the easy conviction of offenders having foul fish in their possession within the prohibited time. But this early introduction of a close season may more probably be attributed to the clear sighted policy and real knowledge of the English Justinian, who perceived the expediency, if not indeed the absolute necessity of allowing for salmon a fixed time to be born, as the times, and modes, and seasons in which they were sure to die, were many and various. However, this may be, and it is matter of merely curious specula-

tion, it is matter of certainty that in the year 1285, 13 Ed. 1, (a) nearly 600 years since, a close season for all the English salmon rivers was fixed, to commence *a die nativitatis Beatae Mariæ*, and terminate *ad Diem Sancti Martinii*, and killing salmon fry was prohibited from the middle of April to St. John's Day.

This early legislation showed some wisdom and foresight, and a desire to secure for salmon an undisturbed spawning time, and for the fry a free passage to the sea.

II. In Ireland more than a century since there were similar regulations; close seasons nearly uniform were fixed, and the destruction of salmon fry during certain months was prohibited; (b) but at a later period in our legislation close seasons suited to the various rivers were substituted for the more rigid uniformity of the earlier statutes.

III. All these statutes have been repealed, and the close seasons of the salmon rivers in Ireland are now regulated by the provisions of the 5th & 6th Victoria, c. 106, and the other statutes collected in the Appendix. The old close seasons were continued to the 1st of January, 1844, and the close season for all the salmon kind was afterwards to be from the 20th of August to the 12th of February; for trout, from the 1st of October to the 12th of February; and netting for trout in a salmon river was prohibited between the 20th of August and the 1st of October. (c) Eels were not to be taken by fixed engines from the tenth of January to

(a) 13 Ed. I, c. 47. See Barrington's Statutes, p. 102.

(b) 18 G. 1, c. 7; 12 G. 1, c. 7.

(c) 5 & 6 Vict., c. 106, ss. 29 and 30.

the 1st of July, (a) nor were oysters or their brood, by dredging or otherwise, between the 1st of May and the 1st of September. (b)

Powers were, however, given to the Commissioners to alter any of those close seasons in particular localities upon inquiry made by them, and on proof that such an alteration was expedient, (c) but so as not to reduce the close season for salmon to less than 124 days. Three months' notice of their intention to hold the inquiry should be given, but this was found too long a period, and a fourteen days' notice was afterwards substituted. (d) The decision of Commissioners is required to be published, and the close seasons thus fixed after inquiry are to be in force for three years, and until again altered on an inquiry similar to that which had preceded the first variation from the fixed statutory close time. (e)

IV. The close season for salmon fixed by the Act of 5 & 6 Victoria, was, after a brief trial, found unsuitable, and the provisions of that Act were repealed by the 1st section of the 9th & 10th Vict, c. 114, and the close season for the tide ways was thenceforth to be from the 1st of September to the 31st of the following January; and for the upper river waters, from the 15th of September to the last day of February; but from the 1st to the 14th September no fixed engine could be used to catch salmon above the tideway. Weir own-

(a) Section 31.

(b) Section 32.

(c) Section 23.

(d) 7 & 8 Vict., c. 108, s. 4.

(e) Sec. 34-35.

ers however were permitted to fish during the month of February, when their weirs were situated within two miles of the tideway, when the poor draught-net fisherman was prohibited from catching any fish during the same month. (a)

The close season for salmon in the North and North-Western Counties of Ireland, Antrim, Tyrone, Donegal, Londonderry, Mayo, Fermanagh, Leitrim, Sligo, was appointed to be from the 20th of August to the 31st of January. (b)

The close season fixed by the 9 & 10 Vict., c. 114, was again altered, save as to the eight before-mentioned Counties, by the 11 & 12 Vict., c. 92, s. 40, which fixed the close season to commence on the 29th of September, and to end on the last day of February.

The close season for trout fishing was afterwards fixed by the 13 & 14 Vict., c. 88, s. 45, to be from the 29th of September to the last day of February, and it was forbidden to draw nets, or use fixed engines, in any salmon river between the 1st and 29th of September. There was given power to the Commissioners to alter any of those close seasons thus settled by statute, if, on enquiry by them conducted in the manner directed in the earlier Act, any alteration of the statutable close season should seem to them expedient. (c)

V. Lastly, it has been provided by the 26 & 27 Vict., c. 114, s. 21, that "the annual close seasons for salmon, save for angling with single rod and line, shall not

(a) Section 2.

(b) Sec. 3, 9 & 10 Vict., c. 114.

(c) 7 & 8 Vict., c. 108, s. 3; 9 & 10 Vict., c. 114, s. 4; 11 & 12 Vict., c. 92, ss. 39 & 40.

comprise fewer than 168 days in each year, and until an alteration is made by the Commissioners, there shall be added at the end of the close time now established for each fishery, so many days as may be required to make the number of annual close days in that fishery 168 days." If in any case the present close time exceeds 168 days, it is not to be reduced.

By the 23rd section of the same Act, the annual close time for fishing with single rod and line shall be from 1st November to the 1st day of February; all other kinds of fishing for salmon are subject to the ordinary close times fixed by the Commissioners, and the recent Act, and which must comprise at least 168 days.

The annexed Table will exhibit at one glance the annual close seasons in each of the fishery districts in Ireland, and as they must continue until altered by the Commissioners.

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CHAPTER XIII.

OBSERVANCE OF ANNUAL CLOSE TIME.

I. The Fishery Acts contain very stringent and most prudent regulations to enforce a due observance of the annual close seasons. The very earliest of these Acts, 5 & 6 Vict., c. 106, (a) provided that all bag nets shall be so made, that the netting of the leaders can be raised and kept out of the water, and that all fixed nets should be made, so that clear gaps of not less than four feet wide for the passage of fish in the annual or weekly close times, could be easily opened. (b) Non-compliance with these regulations, subjects the offender to a penalty not exceeding ten pounds; and these provisions are further enforced by the 43rd section of the 13 & 14 Vict. c. 88, which imposes a minimum penalty of one pound on the offender.

The 37th sections of the 5 & 6 Vict., c. 106, provided that all the machinery of every kind of fishing weirs should be wholly removed and carried away from near the fishery within 36 hours after the annual close season commenced, and should not be again put down until within 36 hours from the commencement of the close season. A violation of this provision subjects the offender to a forfeiture of all the nets and machinery,

(a) Section 26.

(b) Section 40.

and to a fine not exceeding fifty pounds. A mischievous exception is contained in this clause, exempting the weir owner from penalties during the time he might be prevented by floods, or stress of weather, from removing the machinery. This was frequently offered as a ready excuse, and blindly accepted by the magistrates as a reason, for not imposing penalties for the violation of the clause by a friendly weir owner. A slight shower of rain was held to be flood or storm, or stress of weather, exempting the weir owner from penalties, though his offence might be clear and glaring. The clause contained a second proviso, controlling the first, which ought to have shown them their duty clearly, as it enacts that *nothing* shall exempt the offender from the penalties, if he catches salmon during the close season. He cannot exempt himself from the penalty for not removing the fishing cribs during the close season, under pretext of his being unable to do so on account of flood or storm, if in this very stress of weather he catches salmon. This would be indeed absurd, but not the less likely to satisfy a class of magistrates who, when a wealthy offender made £36 by a glaring violation of the close season, fined him £5, leaving him still a handsome margin of profit untouched, and friendship unviolated.

II. The 38th section provides for the removal and carrying away of the chief machinery of all fixed engines, and for maintaining a clear and effectual passage for salmon and other fish, of at least four feet in width from top to bottom of all such fixed engines during the annual close time. A violation of this clause subjects the offender, unless in case of storm or stress of wea-

ther, to a forfeiture of the nets, and a penalty not exceeding fifty pounds, and another not exceeding five pounds a day for every day the nets shall be unre-moved.

Notwithstanding the clear words of these sections, which one might imagine were sufficiently plain, a bench of magistrates recently seems to have decided that "removing during all the close season," meant replacing during part of it, and that "carrying away" the nets from the poles, meant attaching them thereto. What can legislation effect, if such decisions be repeated? (a)

The 34th clause of the 18 & 14 Vict., c. 114, is shorter in its terms, and comprises the substance of the two clauses, 37th & 38th, in the 5 & 6 Vict., c. 106. It enacts that every proprietor, or lessee, or other person, who shall be engaged in fishing for salmon by means of nets of any description, shall remove and carry away from any strand, or from the banks of any river, or from the vicinity thereof, during the yearly close season, all such nets. An omission or neglect to comply with the provisions of this section, as to which, it may be observed, there is no exemption by stress of weather, subjects the offender to a forfeiture of the nets, and a penalty of not less than two, nor exceeding ten pounds.

Weirs for catching white sea fish, may remain up during the close season for salmon, if the Commissioners think it right to permit them. (b)

III. Summary powers are given by the Fishery Acts to the coast-guard, constabulary and other persons, such

(a) *Vide* "Waterford Mail," 6th February, 1863. *Callaghane* and *Arthurstown*.

(b) Section 39.

as water-bailiffs, to enforce, by seizure of the nets, removal of obstructions, &c., the strict observance of the annual close season, (a) and to apprehend offenders in certain cases, where they refuse to tell their names, or give plainly illusory ones. (b)

IV. There seems, then, ample powers given by the Legislature to enforce the observance of the annual close season as against weir owners, and persons using nets, or other parties found openly violating any of the provisions contained in the various Acts for that purpose. The vigilance of the coast-guard, constabulary and water-bailiffs ought to check all open and flagrant violations of these statutes, but they cannot guard against all devices by which those statutes may at times be evaded. Salmon *will* somehow be found, in the close season, in the possession of persons residing near the fisheries, which should be sacred from their visits; foul fish will be accidentally caught, and self-denial sufficient to "return him to his native element," would not be exerted by the captor. Having caught, he might sell it also—it was too good to be thrown away.

To check the number of those accidents it is provided by the 5th and 6th Vict. c. 116 section 36, that if any person shall wilfully take, or fish for, or aid, or assist in taking or fishing for any salmon or trout during the close season, he shall forfeit the fish so taken, and also a penalty not exceeding ten pounds nor less than ten shillings. The penalty is not incurred if

(a) 5 & 6 Vict., c. 106, ss. 82, 3, 6; 7 & 8 Vict., c. 108, ss. 1 & 2; 8 & 9 Vict., c. 108, s. 10.

(b) 5 & 6 Vict., c. 106, s. 87.

the fish is returned into the water immediately without injury; nor if it is captured for scientific purposes (a).

The same section and the 35th of the 13 & 14 Vict. ch. 88 impose a penalty not exceeding two pounds and not less than ten shillings on every person having in his possession, or exposing for sale, any salmon or trout, or *any part thereof*, during the close season. (b) The fish are to be forfeited and a penalty is payable for each fish, or part of the fish, thus exposed for sale or found in the possession of any one (c). Buying a salmon or trout in the close season subjects the person to the same penalties. Any person empowered to enforce the provisions of the Fishery Acts may seize the salmon or trout found illegally in the possession of persons during the close season. To enforce the penalty it is not necessary to prove the fish was *captured* during the prohibited times (d).

V. Notwithstanding these provisions in the Irish Acts, and similar ones in the English statute, (e) it was found that large quantities of salmon were illegally caught during close time and exported to the Continent. This disgraceful trade, so injurious to the Fisheries, will, it is hoped, be altogether prevented by the short statute recently passed, (f) which enacts that no unclean or

(a) 5 & 6 Vict. c. 106, sec. 74; see sec. 22 of recent Act.

(b) The 11 & 12 Vict. c. 92, sec. 42, imposes minimum penalties of 10s. in all cases where the 5 & 6 Vict. c. 106, s. 36, omits to do so.

(c) This mode of enforcing the close season was recommended 100 years ago, Barrington, stat. 104.

(d) The words "so caught" are omitted from the 26th section 13 & 14 Vict. c. 88.

(e) 24 & 25 Vict. c. 109, sec. 19.

(f) *Vide* appendix 26 & 27 Vict. c. 10, sec. 3.

unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, shall be exported, or entered for export, from any part of the United Kingdom to parts beyond seas (a). All salmon entered for exportation in contravention of this provision are to be forfeited, and a penalty not exceeding five pounds for each fish may be imposed on the offender. The burden of proof that any salmon entered for exportation from any part of the United Kingdom between the 3rd day of September and 20th of February following (b) is not so entered in contravention of the Act, lies on the person entering the salmon for exportation (c). It has been considered that this Act prohibiting the export of salmon in the close season will have a very great effect in securing a due observance of it. The police, coast guard, and Custom House officers can easily see that this prohibition is not evaded (d).

(a) To any place beyond United Kingdom, sec. 2.

(b) The English close season is from 1st Sept. to 1st Feb., *vide* secs. 17 & 19, 24 & 25 Vict. c. 109.

(c) Sec. 8, 26 & 27 Vict., c. 10.

(d) The reader is referred to the sections at large in the Appendix of all the statutes; in the text the substance only is stated.

CHAPTER XIV.

WEEKLY CLOSE TIME.

I. In addition to the annual close season, which is variable in the different rivers in Ireland, there has been provided a uniform weekly close time for all the rivers. The annual close time was to secure immunity for the salmon during the spawning season. The weekly close time is for the purpose of allowing a fair distribution of salmon among all riparian proprietors, the upper and lower water fishermen, and securing for the fish some rest against the constant pursuit of their enemies or admirers.

II. The 40th section of the 5th & 6th Vict., c. 106, made the weekly close time for weir and net fishing in all inland waters, invariably to commence on Saturday evening at six o'clock and end on Monday morning at the same hour, a period of thirty-six hours in the whole. The same section prohibited the capture of salmon and trout in tidal waters between the low water next in point of time before six o'clock on Saturday night and the low water next in point of time before six o'clock on Monday morning, a period constantly shifting and affording facility to the favoured stake weir owner for evasion. This unsatisfactory weekly close time was not improved by section 38 of the 13th & 14 Vict. c. 88, but by the recent Act 26th & 27th Vict. c. 114 sec. 20,

a uniform weekly close time for all waters, tidal or other, is fixed, and that is from six o'clock on Saturday morning to 6 o'clock on the following Monday morning, a period exceeding the former by twelve hours, and which can be easily observed and enforced in all districts.

III. During the weekly close time the boxes and other machines in all the inland fishery weirs must be wholly removed, the weirs opened, and a free passage left for the fish through the cribs and boxes, and in all fixed nets there must be a clear passage of at least four feet from top to bottom. A penalty of not less than ten pounds and not exceeding forty pounds may be imposed for any violation of these provisions, (a) and this penalty must be imposed for *each* box or crib, or crive in the weir, in which any fish is illegally taken, or which is left as aforesaid unopened. All nets and boxes used in contravention of the provisions are to be forfeited (b). Some provisions not, however, very easy to enforce, have been made by the 5th & 6th Vict., c. 106, section 63, and 13th & 14th Vict., c. 88, sec. 39, to secure the free passage of salmon during the weekly close season through mill channels and dams; but as it is generally alleged by mill owners, that a compliance with the Acts would injure the water-power, (c) an excuse which requires much evidence to disprove, these provisions are not very effectual or well observed. The conservators should in all cases insist on an effective fish pass or ladder being made in mill dams.

(a) 5 & 6 Vict. c. 106, sec. 40; 13 & 14 Vict. c. 88; see 26 & 27 Vict. c. 114, sec. 20.

(b) Sec. 20 of recent Act. See the sections in full in Appendix.

(c) See exception, sec. 63 of 5 & 6 Vict., c. 106.

IV. The former Acts contained the mischievous exceptions as to floods and storms and stress of weather exempting from penalties. The late Act does not expressly contain any such exemption in sec. 20. The penalties and provisions in the former Acts for enforcing the weekly close time are to be applied to the new uniform weekly close time. Nothing is said as to the exemptions; a question is sure to be raised as to whether the exemptions are extended to the present weekly close time as well as to the preceding. Such was not, at least, the intention of the Legislature, but the language may admit of some doubt on the subject. Magistrates should at least require clear and satisfactory evidence before accepting "stress of weather" as an excuse for not opening the cribs. Indeed as they are required to be made so as to be opened, an offence is committed, when the construction of the weir makes it difficult to be opened during stress of weather, and a penalty imposed for this offence would tend to check the too favourite excuse of the "elements being adverse" to the honest performance of duty by the weir owners, but favourable to his fishing in violation of it.

V. Fishing with rod and line is not prohibited during the weekly close season. Scaring salmon or using devices to prevent salmon from availing themselves of the open gaps during the weekly close time, or taking any salmon in them during it, subjects the offender to a penalty not more than fifty pounds and not less than ten pounds for every offence (a). This

(a) 13 & 14 Vict., c. 88, sec. 46

section contains an exception as to stress of weather similar to that in other clauses, the bad effect of which has been noticed, but a section in the recent Act (a) though imposing lower penalties, may be more effective in preventing any mal-practices or infringements of the weekly close time. It enacts that no person whatever shall scare, impede, or obstruct (words obviously including killing) the free passage of salmon or trout during the weekly close season; and any one acting in contravention of this section shall forfeit the fish taken by him, and any net or instrument used by him, and in addition shall incur a penalty not less than two and not exceeding ten pounds. This is not to apply to any person who takes fish legally by single rod and line.

Sunday fishing in the weekly close time, by rod or line, unless by professional fishermen, (b) does not seem prohibited, however improper in a sabbatarian or religious point of view it may be deemed by most persons.

VI. To see to the observance of the weekly close season is part of the duty of the coast guard, constabulary, and water bailiffs. (c) In the excellent code of instructions on this subject issued to the constabulary, (d) particular notice is directed to their duty on this point, and it is stated that it is of much importance to

(a) Sec. 25 of 26 & 27 Vict. c. 114.

Note—In all cases the reader should refer to the Act and section quoted as the language is fuller and more precise.

(b) 7 Wm. 3, c. 17, s. 1.

(c) 8 & 9 Vict., c. 108, s. 10.

(d) *Vide* last Report of Commissioners, p. 32.

be attended to. In a recent letter by a well known sporting gentleman to the *Field*, the general reluctance of the constabulary to perform their duties connected with the Fishery Acts is noticed. Their superiors, the magistrates, seem, in some cases, not disposed to be more active; and on a late occasion, a southern bench of justices *dismissed* a clearly proved complaint against a weir owner who fished his weirs during the prohibited hours on a Saturday, on his promise not to offend in future. (a) Such decisions do not tend to encourage police or any one else to perform their duty. Nets illegally used during close time, or when prohibited by the Commissioners, may be seized, and detained, and brought before the magistrates at the next Petty Sessions, or any adjournment thereof, and declared by them to be perfected pursuant to the statutes. (b) The owners of boats, cots, or curraghs, used illegally by them for the capture of salmon or trout during any part of the annual or weekly close time, are liable to a penalty for the first offence not exceeding five pounds, and for the second, or any subsequent offence, in addition to the same penalty to the forfeiture of the boat or cot. (c) This provision is not to subject the owner to penalties, where he shall prove to the satisfaction of the justices that his boat was thus used illegally without his consent.

It is necessary to impress upon the reader, when he refers to this title for information as to what is to be done

(a) *Cork Constitution*, August 31, 1863.

(b) 5 & 6 Vict., c. 106.

(c) 26 & 27 Vict., c. 114, s. 18.

in any case arising in practice, the prudence of looking well to the sections cited in the text, and which will be found in full in the Appendix. Their length makes it impossible to extract them in the text of the work, which merely gives a general outline of the provisions on each of the heads. As to weirs, the sections have been also stated fully in the text.

CHAPTER XV.

WASTEFUL MODES OF CATCHING SALMON, AND OTHER
KINDS OF FISH AND THEIR BROOD, PROHIBITED.

I. The thoughtless and improvident modes of capturing and destroying fish, which waste the resources of Nature, and wantonly impair them, have been prohibited by the Legislature from very early times, and these prohibitions have been adopted in the more recent fishery codes with great advantage.

The most destructive mode of killing salmon, was by poisoning rivers, and this was a practice hard to be checked, as while some privately poisoned the rivers at night, others openly took the fish by day, and were not subject to the penalties for poisoning the rivers.

The 80th section of the 5 & 6 Vict., c. 80, enacted that no person shall throw, empty, or cause to run or flow into any river, or lake, any dye stuff, or other deleterious or poisonous liquid, or shall throw into such river, or lake, any lime, spurge, or other deleterious or poisonous matter, (a) or shall steep in such river, or lake, (b) any flax or hemp, under a penalty for every such offence not exceeding ten pounds.

(a) To "fish or animals using the waters," end of section.

(b) Throughout the Fishery Acts, the law of fishing in inland rivers and *lakes*, is assumed to be the same, and as stated *ante*.

This provision was, however, easily evaded, and was soon found to be insufficient, and a much more effectual clause was inserted in the 13th & 14th Vict., c. 88. Section 36 enacts that any person found on the bank of, or near any river, with any deleterious matter in his possession, under such circumstances as shall satisfy the Court before whom he may be tried, that such person *had* employed, or was about to employ, such deleterious matter for the capture or destruction of fish, may be fined by the Court in a sum not less than five pounds, nor more than ten pounds, for every such offence; and any person found taking fish from any river or lake, when it shall be proved to the satisfaction of the magistrates that such fish has been wilfully poisoned, shall be subject to a penalty of not less than ten shillings, nor more than five pounds.

A rough common sense view of the propriety of crushing this systematic mode of evading the penalties, has been adopted by the Legislature, to check the pernicious and wholesale destruction of fish by poisoning; a common sense view which the magistrates of England have recently taken, in preventing evasions of the game laws, and which has received the approval of the Superior Courts in that country. (*a*)

Since the passing of this latter Act, the practice has much diminished of wilfully poisoning rivers to destroy and capture the fish, but in many places much injury is done by flax steeping, and permitting deleterious matter to flow into rivers. The water-bailiffs and conservators should therefore enforce the provisions of the

(*a*) *Browne v. Turner*, 1 N. R., 283; 32 L. J., N. S., 106.

Act of 5 & 6 Vict., which are more readily applied to prevent the constant injury to rivers, arising more from carelessness, than from the wilful and secret poisoning of them for the sake of killing fish.

II. Poisoning is but one mode of excessive and wanton destruction of salmon and other fish. The use of lights at night, or what is well known as "sopping" rivers, to assist in killing fish, of spears, gaffs (save as auxiliary to rod and line), "otters," not the natural, but artificial, dreddraws, strokealls, or lysters, at any season of the year, is prohibited (a) The use of lights at night to catch salmon, subjects the offender to a penalty for every such offence not exceeding ten pounds. (b)

The use of spears, otters, strokealls, and other instruments prohibited by the statutes, entails forfeiture of the instruments illegally used, and subjects the offender to a minimum penalty of four pounds, and a maximum of ten, penalties, if steadily enforced, amply sufficient to check such destructive practices.

III. Much injury was well known to be inflicted on the Salmon Fisheries of Ireland, by the capture or destruction of brood fish and fry in mill-races and similar water-courses, and on the spawning-grounds. The 75th section of 5 & 6 Vict., c. 106, provides that, if any person shall at any season of the year, in any mill pool or mill dam, or in any works appurtenant to any mill or factory, or in any of the water-courses leading to or from those places, use any device whatever,

(a) 5 & 6 Vict., c. 106, s. 78; 13 & 14 Vict., c. 88, s. 40.

(b) 5 & 6 Vict., c. 106, s. 78.

save rod or line, for the purpose of taking, or destroying, or catching salmon, or other fish, or the fry thereof, he shall be subject to a penalty not exceeding ten pounds for every such offence, (a) and shall also forfeit the nets or other engines used by him.

The same section also provides that, if the person committing the offence shall not be known, and there is reasonable ground in the minds of the justices for believing that it was committed by some persons in the employment of the owner, or with his knowledge or connivance, or through any want of reasonable precaution to prevent it, then the owner or occupier of such mill or factory shall be liable to, and shall incur the penalty and forfeiture as if the offence had been actually committed by him.

To all who know the practices frequently tolerated or connived at, and the destruction formerly caused in mill-races by the capture of salmon by the mill-owners, this apparently harsh provision will appear but a reasonable precaution against fraudulent evasion of the beneficial intents of the statute. Teeming or emptying mill-races to catch fish is prohibited by section 78.

IV. The 78th section prohibits, under penalties the same as in the 75th, the use, *between sunset and sunrise*, of any light or fire of any kind, *or having*, in or on the bank of any lake or river any spear, gaff, strokeall, or other such instrument, with intent to take salmon or other fish. (b)

(a) 5 & 6 Vict., ch. 106, sec. 75.

(b) The 13 & 14 Vict., c. 88, s. 40, prohibits their use at *any time*, and enumerates other prohibited instruments. Penalty, maximum, ten pounds; minimum, four pounds, *ante*.

This section also prohibits persons from at any time chasing, injuring, or disturbing spawning fish, or fish on the spawning beds (whether in or out of the close season), or attempting to catch fish in such places, except with rod or flies only within the lawful period, or damming, or teeming, or emptying any river or mill-race, for the purpose of destroying salmon (a) or their fry.

V. The destruction of the fry and young of all river fish is guarded against by sec. 73 of the 5 & 6 Vict., c. 106. This forbids, under a penalty not exceeding ten pounds for every such offence, and forfeiture of all nets, or other instruments used for the purpose, the wilfully taking, selling, buying, or *having in a person's possession*, the spawn, smelts, or fry of salmon, trout, or eels, or in any way obstructing their passage, or wilfully doing them any injury whatever.

(a) In all cases the reader should recollect the *definitions* in the Acts of "salmon," and of other technical words—13 & 14 Vict., c. 88, s. 1; 26 & 27 Vict., c. 14, s. 19.

CHAPTER XVI.

NET AND CROSS-FISHING.

I. Net-fishing may be as pernicious in fresh-water as stake-weirs or fixed engines, in the tidal portions of rivers ; and it was necessary therefore to limit the use of nets, and provide so far as possible against their destruction of undersized fish. The 20th sec. 5 & 6 Vic. c. 106, fixed the size of the meshes for all salmon-nets used in estuaries or tide ways at ten inches, measured round ; *i.e.*, two and a half inches from knot to knot when wet (*a*) ; and the mesh for nets in the fresh-water portions of rivers and lakes was by the same Act, sec. 66, fixed at nine inches ; two and a quarter inches, from knot to knot, when wet. These meshes were found rather too large ; and the 8 & 9 Vict. c. 108, s. 11, reduced the measurements, and made them uniform in the fresh-water and estuaries, seven inches, or one and three-fourths inches from knot to knot, measured *in the clear* when the net is wet.

The Commissioners have power (*b*) by any bye-law to alter the size of the meshes in any locality. The use of nets with smaller sized meshes than is allowed by law is punishable by forfeiture of the nets, and a penalty not exceeding ten pounds. (*c*)

(*a*) This mode of measurement was the common sense mode applied by the Court to vaguer words, "two and a half broad"—*Thomas v. Evans*, 27 L.J., M.C., 172.

(*b*) Sec 12 same Act.

(*c*) 5 & 6 Vict. c. 106, s. 20 & 66.

II. Nets are forbidden to be made with a false bottom, (except nets for taking eels,) or covered with canvass, hide or other substance for the purpose of taking small fish (a). It is also unlawful to fix or keep up continuous nets stretched across the river in any way, or to place, affix, or attach any nets to any stakes, bridges, sluices, lock-gates of canals, or other such fixed erections; or to make *them stationary*, either by fixing them to the soil or holding them in the hand (b). Any offence against these provisions is punishable by forfeiture of the net and the infliction of a penalty not exceeding ten pounds (c).

III. The use of nets is prohibited during the annual close season, and at all times of the year between six o'clock on Saturday evening and six o'clock on Monday morning. No one whatever, save the owner of a several fishery within its limits or those to whom he shall give a written licence, is permitted to use nets for salmon or trout, unless where a general public right of fishing for salmon with nets in the nature of a common of piscary has been enjoyed for twenty years before the year 1842 (d).

When the Special Commissioners shall have defined the fresh-water portions of rivers under the powers given to them, it will be thenceforth illegal to net-fish them for salmon or trout between the hours of eight o'clock in the evening and six o'clock in the morning,

(a) Sec. 66.

(b) Sec. 66, & 13 & 14 Vic. c. 83, s. 1.

(c) Same sec.

(d) Secs. 65 & 66, 5 & 6 Vict. c. 106. Such public right it is understood exists in the river Suir below Clonmel.

except where net-fishing has been heretofore used within the limits of a several fishery next above the tidal flow, and held under grant, charter, or immemorial usage (*a*). The penalties for any offences against these prohibitions are not to exceed ten pounds, together with a forfeiture of the nets illegally used (*b*).

By the 44th section of the 13 & 14 Vict. c. 88, it is also provided that no one except the owner of a several fishery, within his limits, shall use any net for taking salmon at the mouth of any river where the breadth of the mouth shall not exceed a quarter of a mile, or within half a mile inward, or half a mile seaward, or along the coast, from the mouth of any river as defined by the Commissioners, or shall use a net at the mouth or any other part of a river in such a way as may be, in the judgment of the Commissioners, injurious to the free passage of fish and shall be prohibited by any bye-law made by them. An offence against the provisions of this section is punishable by forfeiture of the nets, a maximum penalty of ten pounds, and a minimum of one, and an additional sum of five shillings for every fish taken by means of such net used in the place or manner prohibited.

IV. It will be observed that the privilege is conceded by the provisions of the 5 & 6 Vict. c. 106, s. 65, and s. 24 of the recent Act, to the owners of a several fishery, of using nets in the fresh-water portion of rivers which are within the limits of his "several fishery." The Act 13 & 14 Vic. c. 114, s. 1, defines a "several fishery" to be "a fishery lawfully possessed and enjoyed as such, under *any title* whatever, being a good and

(*a*) 26 & 27 Vict. c. 114, s. 24.

(*b*) Same sections.

(*c*) 5 & 6 Vict. c. 106, s. 66.

valid title at law, exclusively of the public, by any person, whether in navigable waters or in waters not navigable, and whether the soil covered by such waters be vested in such person or any other person."

The title which everyone has to fish in the river bordering his own lands, *ad medium filum aque* is certainly one exclusive of the public, but that title is scarcely the several fishery meant by the statute. Indeed, C. J. Lefroy, whose sound legal judgment all acknowledge, treats this title to fish as being rather "a species of tenancy in common (*a*)," as there are no visible bounds between one side of the *filum* and the other, and the fish run freely across. It has hitherto been considered that netting was not illegal in any part of a river where the owners of the lands or banks at both sides concurred in permitting it. But no question has ever been raised in the Superior Courts on the construction of this Act; and it may be doubted whether the construction given to it in practice was the correct one. However this may be, the 24th section of the recent Act seems to contemplate some kind of "several fishery" quite distinct from the right of fishing incident to every owner of the soil adjoining the banks of a river, as it declares a "grant, or charter, or immemorial usage" to be the only modes of obtaining a title to such fishery. The clause in the recent Act was intended to interdict all net-fishing within the prohibited times, save by a class of persons, very few in number; but it leaves untouched the Act 5 & 6 Vict. c. 106, s. 65, and the right given, and restrictions contained therein. The

(a) Vide *Beauman v. Kinsella*, 8 Ir. C. L. R. 291.

greater interest which all classes of the public will, it is expected, henceforth take in their mutual legal rights, will not improbably lead in a short time to the construction of these doubtful sections being solemnly settled. In the meanwhile the author's opinion on their effect would be unimportant.

V. It may be more convenient to treat of the regulations as to *sea-nets*; *i.e.*, nets for other fish than salmon and trout, in a chapter exclusively devoted to the consideration of what are termed "sea fisheries." Here it will be sufficient to state that all illegal nets may be seized, retained, and brought before the magistrates at their next petty sessions court or any adjournment thereof, when their illegality and forfeiture is to be decided by the Court (a).

VI. Cross-fishing for salmon or trout, save by the owner of a several fishery or any person duly authorized by him in writing, within the limits of the several fishery, is prohibited by sec. 70 of the 5 & 6 Vict. c. 106. In this case also the practice has been for the owners of the two banks of any river to consider themselves as joint proprietors, or between them, of a several fishery; and if they concurred, that they might legally permit cross-fishing. This, too, seems a doubtful construction of the section.

Illegal cross-fishing subjects the offender to a fine for every offence not exceeding five pounds.

The capture of salmon or trout in eel's-weirs is forbidden by 5 & 6 Vict. c. 106, sec. 77, under a similar penalty.

(a) 5 & 6 Vict. c. 106, sec. 103.

CHAPTER XVII.

LICENCES—THEIR INTRODUCTION, AMOUNT, &c.

I. The first great effort made in the better administration of the Fishery Laws was by the introduction of the system of "Licences" for the capture of fish, and of district-boards of conservators for the protection of the rivers and waters of Ireland. To the Right Hon. Sir William Somerville, Bart., when Secretary for Ireland in 1848, is due the merit of this combined system, and the passing of the 11th & 12th Vict. c. 92, by which these two very important branches of the Irish Fisheries were originated and principally regulated (a).

II. The 11th & 12th Vict., c. 92, recites that from the want of co-operation among the several parties exercising the rights of salmon and trout fishing, and the extent of the common or public rights of such fishing on the sea-coast and in the estuaries and rivers of Ireland, and the varied and conflicting interests therein, measures had not been taken for the due protection of the fisheries, and the enforcement of the law, and that to provide for both those objects and to effect any improvement in the fisheries, it was expedient as well as just, to raise the necessary funds from the persons using any engine or device for the capture of

(a) Sir W. Somerville too lent much aid in passing the present Fishery Act.

such fish. The truth and justice of the recital will not be much questioned, nor the utility of the provisions which the Act proceeded, in consequence, to make, in order to inaugurate a better state of things for the future. Hitherto, indeed, the co-operative principle has been but slightly exercised and the recital of its want is still true.

Two additional Inspecting Commissioners were, in the persons of the two inspectors, added to the existing Commissioners and with equal powers (a). They were to divide Ireland and its coasts into convenient fishery districts, (b) and then subdivide each district into two or more electoral divisions, to be called the Upper or Fresh Water and Lower or Tidal divisions, with authority to them to alter the limits both of the districts and subdivisions; and Conservators were to be elected for these districts, to whom were given important powers and duties connected with the administration of the Fishery Laws. These will be next considered separately from the licence duties, the first in importance, and which alone, indeed, will enable the Conservators sufficiently to perform their functions.

III. The 8th section enacts that after the 1st of January, 1849, all engines, nets, instruments, or devices whatever used for the taking of salmon, trout, pollen, or fish of the salmon and trout kind, or for the taking of eels, and all fixed salmon, trout, or eel fisheries in any district, or on or off the sea-coast shall, *before the same is used* in the year 1849, and in any subsequent year, be duly licensed and *rated* in the manner

(a) Sec. 2.

(b) Sec. 8.

therein prescribed. The Commissioners were empowered to fix the first scale of licence duty for each engine, not, however, to exceed the several sums specified in the schedule to the Act, (a) but the board of district conservators are authorised, with the consent of the Commissioners, to alter the rates from time to time, and to fix new scales of charges for the engines mentioned in the schedule, (b) and any others not enumerated, and also to declare the amount, not exceeding ten per cent. of the poor-law valuation to be paid as a consolidated licence duty by "several fisheries" (c).

There was thus payable by "several fisheries" two sums—one the fixed annual licence duty, the other a sum varying with the poor-law valuation of the fishery; but together they were not to exceed ten per cent on this valuation, or such lesser rate than ten per cent as might be settled by the conservators of the district. This variable rate is recoverable before the justices as wages (d), and collectors of those rates can be appointed by the conservators.

By a subsequent Act, 13 & 14 Vict. c. 88, s. 7, all fisheries rated (e) under the poor law are subject to the same rate, in addition to the fixed licence duty, as several fisheries. There is also a power of appeal given

(a) Sec. 10.

(b) By the Act of 1863, sec. 26, fixed engines are charged with sums which the Conservators have not power to alter.

(c) sec. 13 & 21, 23.

(d) See secs. 23 & 24.

(e) The rateable value of the fisheries is generally added to that of the land—*Reg v. Williams*, 5 Jur. N.S. 821.

to the party if he conceives himself unjustly or unequally rated (*a*)

The 26 & 27 Vict. c. 114, s. 26, substitutes for the licence duties on the fixed engines specified in the schedule to the 11th & 12th Vict. c. 88, a higher scale of licensed duties not alterable by the Board of Conservators (*b*).

IV. The fishery licence is only to be valid for one year, and for the district and purpose for which it is issued (*c*). Thus a licence for a bag-net will not enable a person to use a stake weir. Licences are to be in such form as the Commissioners shall from time to time approve, and must be stamped with the seal of the District Board of Conservators (*d*). They are to be publicly sold to anyone who demands to purchase them, by the licensed stamp distributors or other parties named by the conservators, who must give security to account for the sums received by the sales.

The licence or rate is not to confer any title or right to fish in any place, where the person purchasing it could not have had a right to fish if the Act had not

(*a*) 13 & 14 Vic. c. 88, s. 7.

(*b*) The justice of this is apparent. The entire licence duty for *all Ireland* in 1862 was £5,300, of which only £2000 was paid by fixed engines, which caught at least nineteen-twentieths of all the salmon. But this is explained by the fact that the Board of Conservators were really nominated by the fixed engine and stone weir-owners. They taxed themselves and their friends lightly. See Committee's Report of Evidence, 1862, p. 72; Mr. Brady's clear evidence.

(*c*) 11 & 12 Vic. c. 92, ss. 28 and 30, save for salmon rods, good through Ireland.

(*d*) Same sections.

passed (*a*). Periodical accounts of the sales of licences are to be furnished to the conservators.

V. Any person using or erecting any engine, net, instrument, or device whatever, without being duly licensed, is liable to a penalty not less than double, nor more than treble, the licence duty he ought to have paid, in addition to the forfeiture of the unlicensed engine or instrument he has so used (*b*).

Penalties may also be imposed on any person fishing, or going to or returning from it, who refuses to produce to the commissioners, conservators, water-bailiffs, or constabulary his annual licence for any fishing instrument found in his possession (*c*), and for counterfeiting or fraudulently using a licence (*d*). Manufacturers of the unlicensed engines, or persons keeping them for sale, are not subject to penalties (*e*).

Single rods used only for killing trout, perch, pike, or any fish but salmon, are exempt from licence duty (*f*); and a person who pays a licence duty for a rod within any district is not liable to pay an additional sum for a licence to angle with a rod in any other district (*g*). A single rod licence wherever taken out, like a game licence, is good for all Ireland.

The following table will present the reader at a glance a view of the fishing licence duties payable in each district.

(*a*) Sec. 31 of 13 & 14 Vict. c. 88, s. 7.

(*b*) 13 & 14 Vict. c. 88, s. 12.

(*c*) Sec. 29.

(*d*) Sec. 28.

(*e*) Sec. 29.

(*f*) Sec. 21.

(*g*) Sec. 30.

SCHEDULE OF LICENCE DUTIES, payable in each District in Ireland on Engines used for Fishing.

Districts.	Salmon Rods.	Cross Lines.	Snap Nets.	Drift Nets.	Drift Nets.	Trammel Nets for Pollen.	Pole Nets.	Ring Nets.	Stake Nets.	Head Nets.	Box.	Gap, Eye, &c.	Sweepers.	Coghilla.	Loop Nets.
1. Dublin.....	£ s. d. 0 10 0	£ s. d. 2 0 0	£ s. d. 1 10 0	£ s. d. 2 0 0	£ s. d. 2 0 0	£ s. d. 1 10 0	£ s. d. 2 0 0					£ s. d. 1 0 0	£ s. d. —	£ s. d. —	£ s. d. —
2. Wexford.....	0 10 0	1 0 0	0 15 0	2 0 0	1 10 0	0 15 0	1 0 0					0 10 0	—	—	—
3. Waterford.....	0 10 0	1 0 0	1 0 0	2 0 0	2 0 0	1 0 0	1 0 0					0 15 0	—	—	—
4. Lismore.....	0 10 0	1 0 0	0 15 0	1 10 0	1 10 0	0 15 0	1 0 0					0 10 0	—	—	—
5. Cork.....	0 10 0	1 10 0	0 15 0	1 10 0	1 10 0	0 15 0	1 0 0					0 10 0	—	—	—
6. Skibbereen.....	0 10 0	1 0 0	0 15 0	1 10 0	1 10 0	0 15 0	1 0 0					0 10 0	—	—	—
6a. Bantry.....	0 10 0	1 0 0	0 15 0	1 10 0	1 10 0	0 15 0	1 0 0					0 10 0	—	—	—
6a. Kenmare.....	0 10 0	1 0 0	0 15 0	1 10 0	1 10 0	0 15 0	1 0 0					0 10 0	—	—	—
7. Killarney.....	0 10 0	1 10 0	1 0 0	2 0 0	1 10 0	0 15 0	1 0 0					0 10 0	—	—	—
8. Limerick.....	0 10 0	1 6 8	1 0 0	2 0 0	2 0 0	1 0 0	1 0 0					0 10 0	—	—	—
9. Galway.....	0 10 0	1 10 0	1 2 6	2 5 0	2 5 0	1 2 6	1 10 0					0 15 0	—	—	—
10. Ballynakill.....	0 10 0	2 0 0	1 10 0	3 0 0	3 0 0	1 10 0	2 0 0					0 0 0	—	—	—
10a. Bangor.....	0 10 0	2 0 0	1 10 0	3 0 0	3 0 0	1 10 0	2 0 0					0 0 0	—	—	—
11. Ballina.....	0 10 0	2 0 0	1 10 0	3 0 0	3 0 0	1 10 0	2 0 0					0 0 0	—	—	—
12. Sligo.....	0 10 0	2 0 0	1 10 0	3 0 0	3 0 0	1 10 0	2 0 0					0 0 0	—	—	—
13. Ballyshannon.....	1 0 0	2 0 0	1 10 0	3 0 0	3 0 0	1 10 0	2 0 0					0 0 0	—	—	—
14. Letterkenny.....	0 10 0	2 0 0	1 10 0	3 0 0	3 0 0	1 10 0	2 0 0					0 0 0	—	—	—
15. Londonderry.....	0 10 0	2 0 0	1 10 0	3 0 0	3 0 0	1 10 0	2 0 0					0 0 0	—	—	—
16. Coleraine.....	0 10 0	2 0 0	1 10 0	3 0 0	3 0 0	1 10 0	2 0 0					0 0 0	—	—	—
16a. Ballycastle.....	0 10 0	2 0 0	1 10 0	3 0 0	3 0 0	1 10 0	2 0 0					0 0 0	—	—	—
17. Dagheda.....	0 10 0	1 0 0	0 15 0	1 10 0	1 10 0	0 15 0	1 0 0					0 10 0	—	—	—
															1 0 0

This Schedule is compiled from the Schedule of Duties payable in each District on the 31st March, 1863, and the 36th section of the Act of 1863. Fined or Several Fisheries are also chargeable with the additional rate on the Poor Law Valuation.

CHAPTER XVIII.

BOARDS OF CONSERVATORS—ELECTION—POWERS AND DUTIES.

I. By the Act 11 & 12 Vict., c. 92, which originated the system of fishery licences and duties, was also introduced the valuable administrative machinery of District Fishery Conservators.

Section 3 enacted that the Commissioners should form Ireland into suitable fishery districts, to embrace one or more rivers and lakes frequented by salmon or trout, (*a*) and that they should subdivide each district into two or more electoral divisions to be called the Upper or Fresh Water and the Lower or Tidal Electoral Divisions (*b*). The Commissioners are authorised from time to time to alter the districts and subdistricts or electoral divisions (*c*). They are also empowered to determine the number of Conservators, not less than three or more than nine, to be elected from each electoral division of the district (*d*).

II. The Conservators are to be elected by the persons paying licence duty, (*e*) who may vote in person

(*a*) This has been done, and the limits are shown in the map published by the Commissioners with their last report

(*b*) 11 & 12 Vict., c. 92, sec. 3.

(*c*) 13 & 14 Vict., c. 88, sec. 6.

(*d*) Sec. 5.

(*e*) Sec. 7.

or by proxy, such proxy being a qualified elector. The number of votes, at elections for Conservators, which each person paying licence duty possesses is graduated in the following manner.

Every person paying a sum not amounting to £2 one vote; exceeding £2 and not exceeding £5, two votes; exceeding £5 and not exceeding £10, three votes; £10 and upwards, four votes (a).

The elections were originally to be annual, but this being found inconvenient, a triennial election has been substituted, and the Conservators are now to hold their office for three years and until their successors are duly nominated (b).

On the first of October in the year 1864 new Boards of Conservators are to be elected (c).

The triennial period of election will thenceforth be uniform throughout Ireland and will date from that day.

III. No qualification was originally necessary for the office of Conservators. Now, however, it is enacted that no person shall be eligible for any electoral division in which he does not reside or possess real property (d). This provision was intended (e) to check the prevalent practice of wealthy stake weir owners influencing the election of Conservators, by paying licence duty for a number of poor persons, who, perhaps, were not even fishermen, and then by means of their nominees

(a) Sec. 9.

(b) 13 & 14 Vict., c. 88, sec. 13; 11 & 12 Vict. c. 92, secs. 15 & 16.

(c) 26 & 27 Vict., c. 114, sec. 28.

(d) Sec. 29 of new Act.

(e) Introduced by Captain Stackpoole M. P. Ennis.

procuring the election of Conservators who had no interest whatever to check any abuses in the district.

But the qualification is a very slight one indeed—scarcely superior to that required for an elector in a “Potwalloping,” or “Scot and Lot Borough,” and will not, perhaps, at present, have very much influence in altering the constitution of the Boards of Conservators.

Any residence, however humble, and what is a residence need not, and will not, be very precisely defined, or any real property, will qualify a person to hold the trust and office of conservator. The value or amount of real property is not specified. It must be *real*—that is, according to Blackstone, such as is permanent, fixed, and immoveable, (a) and which cannot be carried out of its place—in short, lands or estates connected with them, and not money, or other moveables. “Real property” would seem to be in law the same as “real estate,” and excludes mere chattel leaseholds, terms for years, but includes a lease for life, or any greater estate. (b) However, it has been thought by an eminent counsel, that even the possession of a term for years, or from year to year, will be sufficient qualification under this section. Better the most shadowy than none.

IV. Some persons are also entitled to act as conservators though not elected, from their professing certain qualifications. Thus, owners of several fisheries valued at £100, or upwards, by the poor law valuation,

(a) Vol. 2, p. 16.

(b) *Knotsford v. Gardiner*, 2 Atk., 450; *Whitaker v. Ambler*, 1 Eden., 151.

are *ipso facto*, or, as the statute terms them, "*ex officio*" conservators for the district in which the fishery is situate, (a) but only one person is to be thus constituted an *ex officio* conservator from any one several fishery.

So, too, all magistrates paying the fishing licence duty, and being owners of land abutting on rivers or lakes in any district may act and vote as *ex officio* conservators for that district. (b) The ownership of the land abutting or touching on the river or lake, may be, it seems, for any term or estate, in occupation, or as landlord. In future legislation on this subject, it is probable that precise estates, and of a certain annual rateable value, will be required to qualify magistrates or other persons to be elected, or become *ex officio* conservators for any district.

V. The duties of conservators are important and various. They are to hold general and annual meetings at such times and places as they shall determine on; (c) settle where the power is given to them the annual amount of licence duty; nominate and remove clerks, inspectors, and water bailiffs; select a bank as treasurer, appoint collectors of licence rates, distributors or sellers of licences; (d) see that all monies are lodged to the account of the treasurer; hold elections to fill up casual vacancies in their body; have a common seal to stamp the licences and authenticate acts; apply their district funds in payments of their officers, and in providing fish passes over natural or artificial ob-

(a) Sec. 6, 11 & 12 Vict., c. 92.

(b) 26 & 27 Vict., c. 114, s. 27.

(c) 11 & 12 Vict., c. 92, s. 14.

(d) Sec. 19; s. 26.

stacles in any of the rivers under their control, and generally perform all such duties, as the very meaning of their title implies, of enforcing the laws and protecting the fisheries in their district. (*a*)

At all district meetings of conservators three constitute a quorum, and the chairman is to have a casting voice (*b*).

Special meetings may be called on the requisition of any three of the conservators. Notice must be given in the manner required by sec. 18, either by advertisement inserted twice in the local newspapers, or sent to each conservator at least ten days before the time and place fixed for the special meetings (*c*).

VI. No conservator is eligible to hold any appointment under the Board with a salary or emoluments of any kind (*d*).

Security must be taken by the Board from their clerk and other officers having the care or custody of any money to be received under the Act for the due performance of his office (*e*).

VII. The clerk is to attend the meetings of the Board and keep a proper account of all monies received and applied by the Board of Conservators, and of the proceedings and transactions, and furnish accounts to the Commissioners of the monies received and disbursed, and perform all such other duties as the Board

(*a*) See secs. 14, 15, 16, 19, 20; sec. 10, 13 & 14 Vic., c. 88.

(*b*) Sec. 17, 11 & 12 Vict. c. 92.

(*c*) Sec. 18.

(*d*) Sec. 19.

(*e*) Secs. 30 and 33.

may direct (*a*). Much of the efficiency and use of the Board depends on the selection of an intelligent clerk, well acquainted with the duties of his office, the various provisions of the Fishery Acts, the mode of proceeding, and the evidence necessary to recover penalties for offences under them: he should have, too, somewhat of professional ability and zeal. He should be entirely unconnected with any person having stake or other weirs in the district, as they are the very parties whose acts he has most frequently to question and punish. Some Boards of Conservators have made very fortunate selections in choosing their clerk, others quite the reverse; and hence very often the difference in the working of the system in one district and another.

VIII. All payments for the purposes of the district must be by drafts on the treasurer signed by the chairman at any general meeting of the Board and by two other Conservators (*b*).

IX. The Board of Conservators are empowered at a general meeting to make an order, if they shall think fit, under their hands and seal, authorizing the conservators of any electoral divisions to hold meetings within their divisions, and, in short, to constitute for most purposes an electoral division Board, with powers nearly as co-extensive as to the appointment of officers as the General Board for the district (*c*). The General Board, however, retains their superintending power throughout the entire district.

The appointment of officers under the Act does not

(*a*) Sec. 88.

(*b*) Sec. 27

(*c*) 18 and 14 Vic. c. 88, s. 5.

require any stamp duty. (a) That, however, on the appointment of water-bailiffs under 5 & 6 Vict. c. 106, is by an earlier Act fixed at five shillings (b). If appointed by the Board of Conservators no stamp is necessary. From this outline of the powers and duties of the Boards of Conservators it will be readily seen how important this machinery may henceforth be made in the administration and effective working of the fishery laws (c).

(a) Sec. 86.

(b) 5 and 6 Vict. c. 106, s. 82; 8 and 9 Vict. c. 108, s. 18.

(c) A very beautiful map has been prepared by the Commiss showing the fishery districts of Ireland. By the kindness R. Griffith, the head of the Board, I have been enabled to append to a limited number of copies of this work.

CHAPTER XIX.

POWERS AND DUTIES OF THE COAST-GUARDS, CONSTABULARY, AND WATER-BAILIFFS UNDER THE FISHERY ACTS.

I. The efficient administration of the fishery laws depends very much on the way in which the duties of the subordinate but important functionaries—the coast-guard, constabulary, and water-bailiffs are performed. The two first have many onerous duties besides those connected with the fishery laws; the latter body has been called into existence for the sole purpose of enforcing them. The coast-guard was the force to which at first was entrusted the enforcement of the fishery laws in the maritime districts, to which they were chiefly confined.

II. By the 5 & 6 Vict. c. 106, s. 86 and several following sections, the officers of the Royal Navy and the officers and men of the Coast Guard stations were empowered to enforce the various provisions of that Act, as to the registry of vessels engaged in fishing, the use of proper nets at lawful times and places, and to see that the fishing trade was conducted in all respects conformably to the requirements of the statute. They were armed with powers to go on board any fishing vessels, to seize illegal nets, to require any person caught while infringing any of the provisions of the Act in using illegal engines, or unlawfully fishing during the

close time, to give his name and place of abode, and to arrest him if the name and address given were palpably fraudulent, and illusory ; and if three or more persons were found together, forcibly and by intimidation, trying to prevent other persons from lawfully exercising their right of fishing, to arrest them and bring them before a magistrate to be dealt with according to law (a). They are authorised also to seize all engines illegally placed or not taken away during the annual or weekly close time ; to open if necessary the proper passages in all engines and weirs during those seasons ; to seize all salmon or trout found in any person's possession during the annual close season (b) ; and, in fine, to exercise a general superintendence over the trade or occupation of fishing, and watch that it is only legally exercised, by parties duly licensed, by proper engines and at lawful times.

Fishing at sea by trawl and trammel nets, and dredging for oysters, were more especially under the control and inspection of the coast-guard. And any person assaulting or obstructing them in the discharge of their duties connected with the administration of the fishery laws is liable to a penalty not exceeding ten pounds (c).

The duties of the coast-guard are well understood by them, and in general most efficiently performed (d).

(a) 5 & 6 Vict. c. 106, ss. 86, 87, 88.

(b) Not during the weekly close times—13 & 14 Vict. c. 88, s. 35 ; 8 & 9 Vict. c. 108, s. 10.

(c) 5 & 6 Vic. c. 106, s. 90.

(d) An excellent summary of their powers and duties has been compiled by Mr. T. F. Brady, Inspector of Fisheries, for their use. Copies are at all their stations.

III. The Irish constabulary were at first prohibited from in any way interfering with the administration of the Fishery Acts. It was conceived to be an invidious duty for them to perform, and not unlikely to bring them into collision with the populace or poachers, and to cause them to incur the dislike of that latter respectable class. This was soon felt to be a grave error; and accordingly by the 7 & 8 Vict. c. 108, s. 2, this prohibition was removed, and they have since been made useful auxiliaries in enforcing those laws, whenever the magistrates in the locality showed any real interest or desire that they should be efficiently worked for the public benefit.

The charter of their powers is chiefly the 2nd section of the 8 & 9 Vict. c. 108; and their duties are pointed out to them in the excellent code of instructions furnished to the constabulary. "They are to exercise the utmost vigilance in enforcing the strict observance of the fishery laws as far as may be compatible with the prior and more pressing duty of preserving the public peace (a).

IV. The instructions specify their chief duties to be, "To enforce the observance of the annual and

(a) This limitation is obviously merely a hint to "do things quietly." They legally are empowered and physically strong enough to prevent breaches of the peace in enforcing the law; and if any breach of the law takes place during their attempt to enforce it, they are not to desist from performing their duty, but to make others desist from violations of the law. A contrary rule would be indeed absurd, and much more worthy a certain well-known charge to the night-watch than instructions from the efficient head of the Irish constabulary. They must both enforce the law and also keep the peace.

weekly close time, the preservation of the fry and spawn of salmon, trout, and eels, and the prevention of all modes of fishing, except by rod and line, in the works, (a) or water courses appurtenant to mills or factories." The instructions add that "In all cases of offences at night, and of persons having or using any light or fire, spear or gaff, strokeall, or other such instrument, with intent to take salmon or other fish, in or on the bank of any river or lake, or disturbing spawning fish, it is particularly desirable that every exertion should be made to enforce the provisions of the statutes."

A schedule containing the provisions to be enforced, and a detail of the manner of proceeding, is annexed to the instructions, and it is stated, "Generally, it will be desirable to proceed by summons to the Petty Sessions, but where parties are caught in the commission of offences during the close season, it will be advisable to seize the illegal instruments used or the legal instruments used illegally for fishing; and if the parties are unknown, and refuse to give a satisfactory account of themselves, to apprehend them pursuant to the Act, and bring them before a magistrate to be dealt with according to law. (b) The schedule referred to in the above instructions contains a short and careful summary—unnecessary to reprint here—of the various clauses in the then existing fishery code, relating to the annual and weekly close times; of those referring

(a) In the usual sense of "mill works," the police have an easy duty to prevent fishing in them.

(b) Taken from the instructions as printed in last Report of Fishery Commissioners, p. 31.

to the fry, spawn, and foul, or spent fish, to the Queen's share or gap, and free passage of fish, to mills and factories, disturbing spawning grounds, using lights, &c., at night, draining or emptying rivers to catch fish, and to the use of illegal instruments or devices, such as spears, gaffs, otters, &c., at any time of the year. These instructions which will be, it is presumed, revised and adapted to the present state of the law, give to the police the fullest information necessary for the knowledge of their duties. It is for the magistrates, conservators, and public generally, to see that those duties shall be performed.

V. The humbler class of officials, the water-bailiffs are, however, the persons on whom the enforcement of all the principal regulations in the Fishery Acts mainly depends.

At common law the proprietor of a several fishery might appoint a bailiff to manage it, (a) and the early Irish Fishery Acts enabled owners of fisheries to nominate bailiffs with authority to apprehend offenders or trespassers on their rights (b). This power has been somewhat modified in the recent code. The 5 & 6 Viet., cap. 106, sec. 82, empowered the proprietors of fisheries to appoint water bailiffs to protect the fisheries in which they were interested, but the appointment required the confirmation of two justices at Petty Sessions, and any person acting as water bailiff without such confirmation of the appointment, was liable to a penalty not exceeding ten pounds (c). The

(a) Davies' Rep. 151.

(b) 12 G. 1, c. 7, sec. 4,

(c) Secs. 82 & 83.

very appointment was also subject to a 5s. stamp (a). These bailiffs were, of course, somewhat in the nature of private servants, though invested with considerable privileges, and were to be paid by the parties nominating them (b). The power thus vested in owners of fisheries was not very extensively used or beneficial to the public.

VI. The real utility of the system of water bailiffs and inspectors dates from 1850, when funds were provided for their payment by the introduction of licences, and control and supervision were ensured by the establishment of Boards of Conservators. By section 19 of the 11 & 12 Vict. c. 92, the Boards of Conservators are authorised at any time where it may be expedient, to appoint as many inspectors and water bailiffs as their funds will admit of, and as may be necessary to enforce the observance of the fishery laws within their district. The appointment of these officers, which may be in the form, with but little variation, of that given in the Act of the 5 & 6 Vict., c. 106, does not require any stamp, (c) or the confirmation by justices at Petty Sessions, and when appointed they have for the enforcement of the fishery laws, the powers of *Constables*, and all the powers and authorities conferred for the same purpose on the water bailiffs, or officers or men of the Constabulary Force, or Coast Guard or Navy.

VII. Some few special powers were conferred on water bailiffs by the Act of the 5 & 6 Vict., c. 106,

(a) 8 & 9 Vict., c. 108, sec. 13.

(b) And those whose offences they winked at, sec. 84.

(c) Sec. 86, 11 & 12 Vict., c. 92. See form in Mr. Brady's instructions.

which it may be well to notice. The 84th section of that Act gave power to all water bailiffs appointed under it, (and all such powers are now vested in the inspectors and water-bailiffs deputed by the Conservators,) at all times, and at all seasons, without any hindrance, to enter into any park, through or along the banks or borders of any lake or river frequented by salmon or trout, or the tributaries in the district, and with boats or otherwise to enter upon all and every such lake or river, and to enter upon and examine all rivers, sluices, mill dams, mill races, and water courses communicating therewith, and to pass along the same, and to enter any boats engaged in fishing, and to examine all standing, floating, or other nets whatever, and to seize all illegal nets, engines, instruments, and devices whatever when used illegally, and to do all other acts required by them to be done under any by-law of the Commissioners or warrant of a justice. They are not, however, allowed to enter any garden enclosed with a wall or paling, nor any dwelling house, or the curtilage thereof (except where the ordinary road to any weir, dam, or dyke is through it,) without the warrant of a justice of the peace. Any justice, however, upon information on oath that there is probable cause to suspect that the provisions of the Act are violated within these excepted places, may grant a warrant, under his hand and seal, and which is to be in force for a week at farthest, authorising the water-bailiff to enter even these excepted places. These are very useful provisions and indeed without them the water bailiffs would be powerless to enforce obedience to the law.

VIII. Water-bailiffs are authorised to enforce the observance of the annual and weekly close time by removing the obstructions, and seizing the nets and engines illegally used. They are empowered to seize foul fish during the annual close season, and to demand from anyone fishing his licence. All weirs of every kind, Queen's gaps, and fish-passes must be open for their inspection (a); and as they have the general powers of the coast-guard and constabulary they can exercise such powers precisely as the constabulary may, in seizing all fishing implements or engines, arresting all persons violating the law who refuse to give their names, or who give illusory ones; and preventing, if necessary by arrest of the offenders, any persons, more than three together in number, using violence or intimidation to deter others from lawfully fishing.

As it is unlawful to catch, *at any* time, foul or unseasonable fish, though in the open season (5 & 6 Vict. c. 106, s. 74), water bailiffs should exercise some vigilance in checking this practice. It is, however, hard to do so when the fish is caught by the angler, as it is generally killed by the gaff before it is finally caught.

Assaulting, or resisting, or wilfully obstructing any peace officer, water bailiff, or any person acting in his aid, while in the execution of his duty, is an indictable misdemeanour. If, however, the offence be deemed trivial by the justices they may deal with it summarily by fine or imprisonment (b).

(a) Vide 8 & 9 Vict. c. 108, s. 10, 13 & 14 Vict. c. 88, s. 35; 26 & 27 Vict. c. 114, s. 31; 11 & 12 Vict. c. 92, s. 29.

(b) 24 and 25 Vict. c. 100, sec. 38; 25 and 26 Vict. c. 50, sec. 10. They are also punishable under s. 90 of 5 & 6 Vict. c. 106.

IX. Excellent instructions have been compiled by Mr. T. F. Brady, now Secretary to the Special Commissioners, and at the time an Inspector of Fisheries, for the information and guidance of the coast-guards and water-bailiffs in the discharge of their duties. Those instructions will, it is understood, be shortly revised by him, condensed, and made suitable to the existing state of the law; and when this is done they should be put by the conservators into the hands of all their water-bailiffs and inspectors, with the strict order,—

Nocturna versate manu, versate diurna.

CHAPTER XX.

MAGISTRATES' POWERS, &c., UNDER FISHERY ACTS— PROCEEDINGS BEFORE, AND PENALTIES.

I. A general jurisdiction was given to justices of the peace to proceed in a summary way, or at petty sessions, against any offender under the first Fishery Act, 5 & 6 Vict. c. 106, where the offence was punishable by penalties, fine or forfeiture (*a*). The mode of proceeding was pointed out by that Act, and the magistrates were empowered to levy the amount by distress and sale of the offender's goods, and by imprisonment, not exceeding two months where the fine does not exceed five pounds, and not exceeding three months in any case, where no goods of the offender could be found to discharge the penalties (*b*). They had jurisdiction also to order the destruction or forfeiture, as the case might require, of nets and other engines brought before them by officers or persons authorised to seize them (*c*), and to award and levy the costs and expenses of any proceedings from the offender (*d*). They have power to summon witnesses and fine them if without

(*a*) Sec 94; Humphreys, 65.

(*b*) See sec. 94; see also 14 & 15 Vict. c. 93, s. 22; Humphreys, 301, *et seq.*

(*c*) Sec. 103.

(*d*) Secs. 94 and 95.

lawful excuse the persons summoned refused to give evidence (a); and the testimony of persons interested, either as owners of fisheries or as being entitled to portions of the penalties, was made admissible and sufficient to enable them to convict offenders (b). Conservators are not disqualified from acting as justices on the hearing of cases of breach of the fishery laws (c).

If the offence is committed upon any lakes, rivers, or streams forming the boundaries or mearing lines between any two districts of petty sessions, the prosecution may be before any justice of the peace in either district (d). Magistrates of maritime counties have jurisdiction over persons offending against the Fishery Acts at sea (e). The Fishery Acts subsequent to that of 1842 provide that the forfeitures and penalties for offences under them may be recovered in the same manner as those under the provisions of the former Act (f), and a short form of conviction is given which may be adapted to any offence committed against the provisions of the fishery code (g). The convictions and adjudications are, unless appealed from and reversed, *final* and not to be removed by *certiorari* or

(a) Sec. 105, 14 & 15 Vict. c. 93, s. 13. No one is bound to criminate himself in such proceedings—*Cattell v. Ireson*, 1 Ell. & B. 91.

(b) Sec. 104, 14 & 15 Vict. c. 93, s. 13.

(c) 13 & 14 Vict. c. 88, s. 11.

(d) 13 & 14 Vict. c. 88, s. 47, amending s. 96 of Act of 1842.

(e) 5 & 6 Vict. c. 106, s. 96; 14 & 15 Vict. c. 93, s. 7.

(f) 8 & 9 Vict. c. 108, s. 23; 9 & 10 Vict. c. 114, s. 5; 11 & 12 Vict. c. 92, s. 35; 13 & 14 Vict. c. 88, ss. 49 & 50; 26 & 27 Vict. c. 114, s. 45.

(g) 13 & 14 Vict. c. 88, s. 50.

otherwise into any of the superior courts, and are not to be quashed, set aside, or judged insufficient for want of form only (a).

II. All penalties therefore are recoverable before justices unless when the clause imposing it as section 8 of the recent Act, 26 & 27 Vict. c. 114, which gives a penalty of £50 for keeping up an illegal fishing-weir, directs its recovery in some other manner.

III. The provisions of the Petty Sessions Act, 14 & 15 Vict., chaps. 90 & 93, and 21 & 22 Vict., c. 100, now apply to summary proceedings, and all penalties are to be recovered, awarded, and applied, and levied, as directed by those Acts. They regulate the substance and form of procedure. So many excellent treatises on the office, jurisdiction, and procedure before justices at petty sessions, have recently been published in Ireland, that it is unnecessary here to do more than refer to some of these works, (b) which will afford ample guidance in all summary proceedings under the Fishery Acts, as there is, in general, nothing in them requiring a different course of proceeding, and the various petty sessions clerks are sufficiently familiar with all the formalities connected with the jurisdiction of these Courts.

IV. But there is one branch of the jurisdiction of magistrates connected with the Fishery Laws, which derives more importance from recent events, and that is their authority to put down illegal weirs.

By the Act of 1842, magistrates seemed to have ju-

(a) Sec. 50.

(b) Levinge, Humphreys, Lefroy, by Barton, Works on Justice of the Peace and Criminal Law, all good.

jurisdiction over one class only of illegal stake weirs, or other fixed engines, that was, where they were erected in narrow rivers, or mouths of estuaries, contrary to the provisions of the 22nd section. That section authorised the imposition of a fine not exceeding thirty pounds, and the forfeiture and destruction of the illegal net, by any justice of the peace. In other cases, the jurisdiction was vested in the Commissioners, the Admiralty, or other Courts.

The 8 & 9 Vict., c. 108, ss. 2, 5, and 6, imposed penalties on persons who may not have themselves erected such weirs, but who used them in those narrow channels, (a) and on all persons save those specified in the 18th and following sections of the Act of 1842, (b) erecting any weirs, or re-erecting weirs decided to be illegal, (c) and also gave power to the magistrates to forfeit the illegal weirs, and to remove them at the expense of the offender. Their powers were confirmed and enlarged by secs. 16 & 17 of the 13 & 14 Vict., c. 88, by which they are authorised to remove all weirs erected contrary to that Act, and to the 5 & 6 Vict., c. 106, and to inflict a penalty not exceeding ten pounds, and not less than one, and forfeiture of the nets, on the offender. (d) They had the same power of forfeiture, and removal, and imposition of penalties not less than two pounds for every day any weir was erected or used in or near any place where a weir had before been adjudged to be illegal. (e)

(a) Section 2.

(b) Section 5.

(c) Section 6.

(d) Section 16.

(e) Section 17.

The magistrates have thus a very extensive and remedial jurisdiction over illegal fixed engines, but hitherto it has been most unsatisfactorily exercised, and in a manner calculated to bring great reproach on the administration of justice. Recently, however, a better and wiser spirit in discharging their public functions, and very solemn trusts, has been awakened in them, and a very late case here reprinted shows how important is this jurisdiction, and how beneficially it may be exercised. (a)

(a) *Case extracted, "Evening Mail," Sep. 18, 1863.*

"FISHERY CASE.—At the Killybegs (County of Donegal) Petty Sessions, on the 14th instant, before Captain G. A. Smith, R.N., chairman, the Rev. E. Labatt, and the Rev. J. Beatty, Mrs. Anne Hamilton was summoned at the suit of H. G. Murray Stewart, Esq., for fishing with a bag-net on a part of the coast called the Ring of Largy, she not being owner or occupier of the adjoining land, as required under the provisions of the 19th sec. of the 5 & 6 Vict. c. 106. The offence was alleged to have been committed on the 27th of July last. A second summons charged a similar offence on August 12. The fact of the fishing was proved by several witnesses, and the ownership of the net admitted by Mrs. Hamilton, on whose behalf evidence was brought forward to shew that the net was fished under the written authority of the Rev. G. N. Tredennick, owner and occupier of the Ring of Largy, which is a small point of rock jutting out into the sea. But the magistrates being of opinion that this did not confer the title required by the statute, a mitigated penalty of £1 1s. and costs, with forfeiture of the net, was inflicted in each instance. The fishermen in the employment of Mrs. Hamilton had also been summoned at the suit of Mr. Murray Stewart, but were not proceeded against. This prosecution, being the first, we believe, which has been instituted at petty sessions under the 19th section of the 5 & 6 Vict., chap. 106, was a matter of much local interest. A similar case, that of the Hon. David Plunket against Mr. J. Hector, for fishing without legal title on the coast of Achill, was adjudicated on by the Commissioners of Public Works in the month of June of the present year."—*"Evening Mail," Sep. 18, 1863.*

V. Appeals from any order of justices directing the abatement of illegal weirs, must be to the next judge of assize. (a) In all cases of summary convictions, an appeal lies to the quarter sessions under the provisions of the Act of 5 & 6 Vict., c. 106, s. 99, and the Petty Sessions Act, (b) and a dismiss may be appealed from as well as a conviction. (c)

VI. The mode in which the penalties imposed for breaches of the Fishery Laws are to be applied, are in general regulated by the Petty Sessions Acts, 14 & 15 Vict., c. 90, 93, and 21 & 22 Vict., c. 100; but some of the penalties are excepted from the operation of these Acts. The penalties recovered under the 11 & 12 Vict., c. 92, s. 22, by forfeiture of the net or engine, used or erected for fishing without the proper licence duty, being instead of the duty itself, is to be added to the general funds of the district, (d) and one-half of all other penalties incurred by breach of the Fishery Laws, was applicable to the same fund, and the other half to the informer. Under the 28th section of the 21 & 22 Vict., c. 100, the fines and penalties under the Act of 11 & 12 Vict., c. 11, are to be applied as directed by this latter Act, save that only it should not be lawful to award more than one-third of the penalty to the informer. This is the proportion of penalties which the Court may award the informer under the 14 & 15 Vict. c. 93, s. 22. In a recent work of considerable autho-

(a) 13 & 14 Vict., c. 88, s. 51.

(b) 14 & 15 Vict., c. 92, s. 2; 14 & 15 Vict., c. 93, s. 24.

(c) 5 & 6 Vict., c. 106, s. 100.

(d) Section 22, and see 5 & 6 Vict. c. 106, s. 109.

rity, (a) it is stated that "a doubt suggests itself, whether the penalties imposed under 5 & 6 Vict., c. 186, or those under 18th & 14th Vict., c. 88, are affected by the 21 & 22 Vict., c. 100, s. 28, as those statutes are not referred to in the latter Act. Perhaps, the soundest construction is to hold that the provisions as to penalties under all the Fishery Acts, are incorporated into, and regulated by, the 11 & 12 Vict., c. 92, s. 35, and that the alteration of that section by the 21 & 22 Vict., c. 100, s. 28, affects and regulates the disposition of penalties under all the Acts." This seems the sound construction, and one adopted apparently in the late Act, s. 48, which shortly provides that all penalties imposed by that Act shall be recovered and applied in the manner in which penalties under the Salmon Fisheries Acts are recoverable and applicable. The application of the penalties then seems to be uniform in all cases (b) but the one excepted, that of penalties for non-payment of the fishing licence duties, all of which are to be added to the funds of the district.

VII. Minimum penalties are now very generally inserted in all clauses of Acts of Parliament which inflict penalties for any offence, and the recent Fishery Acts have, in most cases, provided them. The omission from the Act of 5 & 6 Vict., c. 106, to provide minimum penalties which the justices could not, under any circumstances, reduce, if the offence was proved, was the cause of very painful and flagrant abuse of the

(a) *Levinge* (now Mr. Justice Levinge, Calcutta), *Justice of the Peace*, 1862, p. 510.

(b) *Humphreys*, 65. As to the form of conviction to "be paid and applied according to Law."—*Reg. v. Hyde*, 7 Ell. & B., 859.

trust reposed in them to administer justice fairly. (a) This error was corrected by the 11 & 12 Vict., c. 92, s. 42, as to all offences specified in the 36th section of the earlier Act, by catching fish during the annual close season. The minimum penalty which can be now inflicted for such an offence, is ten shillings.

The magistrates can award the expenses connected with any work ordered by them to be done. The Lord Lieutenant has power to remit any sentence of imprisonment under the Fishery Acts. (b)

Persons cannot be convicted for any offence against the 5 & 6 Vict., c. 106, or 13 & 14 Vict., c. 88, unless the prosecution for the same shall be commenced within six calendar months from the time of the commission of such offence. (c)

This period of limitation does not, however, extend to acts in their nature *continuing* offences, such as keeping up illegal weirs. The offence is daily committed, and proceedings may be taken at any time to punish the offender. (d)

(a) *Vide ante*, 77.

(b) 5 & 6 Vict., c. 106.

(c) Section 50 of 13 & 14 Vict., c. 88.

(d) *Doe v. Woodbridge*, 9 B. & C., 376; *Doe v. Jones*, 5 Ex. 498.

CHAPTER XXI.

“ COMMISSIONERS’ ” POWERS AND DUTIES OF—BOTH GENERAL AND SPECIAL.

I. The “ Special Commissioners ” have, as already stated, all the powers and privileges which were vested in the Commissioners of Fisheries, save as to white sea fish and oysters (a). They have, in addition, very extensive powers, treated of in earlier chapters relating to fixed engines and Queen’s gaps, which they must soon be called upon to exercise. Before doing so, however, they may perhaps feel it to be necessary to execute some other duties of considerable nicety and difficulty vested in them by the recent statute.

II. By various clauses of the earlier fishery Acts, the Commissioners were empowered and directed to define the mouths of certain narrow rivers, (b) near which the use of fixed engines or nets was forbidden ; (c) and when Ireland and its fishery limits were divided into districts on the introduction of the system of Conservators and licences, they were required to subdivide each district into two or more electoral divisions, the fresh water and tidal divisions, and delineate and mark out on maps the limits and boundaries of these divi-

(a) Sec. 15.

(b) 5 & 6 Vict., c. 106, secs. 22 & 27.

(c) Same secs. and 7 & 8 Vict., c. 108, 8 & 9 Vict., c. 108, sec. 9.

sions and districts (a). Further powers of defining the mouths of *tributary* rivers, at their entrance into other rivers, estuaries, roadsteads, or bays, were given to them by the 13 & 14 Vict., c. 88. These powers have been exercised by defining the mouths of several rivers, a schedule of which, and of their mouths, as thus defined by the Commissioners, will be found in the Appendix.

III. But additional powers have been given to the Special Commissioners under the recent Act, 26 & 27 Vict., c. 114, and they are required for the purposes of the same Acts, (b) and notwithstanding any previous definition of the Commissioners under the earlier Acts, to mark out by reference to maps or otherwise, what are to be the boundaries of mouths of rivers and estuaries, and the boundaries between the tidal and fresh water portions of each river. They can also, when several streams flow into a common mouth or estuary, declare that the outlets of such streams form separate mouths or estuaries, (c) and they may (d) define the point or points of mouths of rivers or estuaries from which distances are to be measured under the recent and the former Fishery Acts.

IV. It is under the operation of this somewhat vague and certainly large and discretionary power thus vested in the Special Commissioners, and the exercise of which will demand their very earliest attention,

(a) 11 & 12 Vict., c. 92, sec. 3, and 13 & 14 Vict., c. 88, sec. 38, similar powers.

(b) Sec. 17.

(c) Sec. 17.

(d) And aught—"may" in such cases is read "shall."

that some persons indulge the sanguine hope, and many are afflicted with the most suspicious fear, that the bag-nets of favoured individuals may yet be preserved in estuaries of rivers, and indeed in the very rivers themselves. The third section, as has before been remarked, makes the use of bag-nets altogether illegal in rivers or estuaries, as such rivers or estuaries have been defined by the Commissioners, or as they shall be defined by the Special Commissioners under sec. 17 of the 26 & 27 Vict. c. 114, or if such bag-nets are within three miles from the mouth of any river defined as aforesaid. As to rivers, the mouths of which have already been defined, the illegality is clear enough; and the Special Commissioners will probably merely adopt by a formal order the definitions of their predecessors in office, made, as they have been, skilfully and impartially. But the duty under this large power of defining, *i.e.*, marking out the mouths of other rivers and estuaries, and even of the estuaries of those rivers the mouths of which have already been defined, must receive their earliest attention. Their powers will, no doubt, be executed with the greatest care, and with the fullest opportunities to all persons of discussing the propriety of the proposed definitions, and with such circumstances of publicity and judicial fairness as will wholly exclude the suspicion of private influences swaying their solemn decisions. Similar powers of defining the mouths of rivers and estuaries are vested in the Fishery Commissioners for Scotland; and the open and satisfactory manner in which they have proceeded to perform their important and difficult task of marking out the mouths of rivers and estuaries will

most probably be adopted by the Special Commissioners for Ireland (a). The public must be apprised of each step, and they can watch, assist, and canvass the definitions; and no injustice *can* be done if the public co-operate with the Commissioners in this portion of their duty. This power must necessarily be

(a) See in the following extract the manner of proceeding in Scotland :

THE SCOTCH SALMON FISHERIES COMMISSION.

"The *Inverness Courier* of the 23rd ult., says :—The commissioners appointed under the late Salmon Fisheries Act have visited a large part of the North during the last ten days. Their object is to receive evidence respecting certain duties imposed upon them, namely :

To fix the natural limits dividing each river and estuary from the sea, in so far as not already fixed.

On Wednesday (15th) they were in Fochabers; on Thursday in Forres; on Friday they proceeded down the Moray Firth from Inverness to Cromarty and back in a tug steamer, making a complete survey of the coast at low water; on Friday they assembled at Inverness and patiently expended nearly seven hours in listening to and recording evidence on the various points at issue; on Monday (20th) they were at Dingwall; on Tuesday at Tain; Wednesday they sat at Golspie; and on Friday they will be at Wick.

The evidence taken extends to such a length that we are unable to extract it. For the most part little difficulty was made, the commissioners appearing to manage the delicate task they had in hand very judiciously and satisfactorily, the definition of the estuaries upon the Murray, Dornoch, and Cromarty firths being the only points which appeared to present a difficulty; and this is not very surprising, when it is considered that upon this point the existence or abolition of sundry fixed nets depends. The rivers taken were the Spey, Lorne, Findhorne, and Nairn, Ness and Beuly, Conon and Alness, the Shin, Carron, and Oykel, and the Duke of Sutherland's rivers."

Mr. Ffennell was Commissioner in Ireland, and lent every assistance in his power towards passing the recent Irish Salmon Fishery Act. His opinions have been very consistent.

one of the first exercised, since good definitions will much facilitate the Commissioners' labours as to one species of fixed engines, bag-nets, the destructiveness of which caused separate and more absolute prohibitory legislation for them (a).

But no definition (b) of the mouths of rivers or estuaries will exclude bag-nets from the inquiries which must be instituted by the Special Commissioners under sec. 5 of the recent Act; and if a definition may at first appear to except some, it is only that they more inevitably perish under the operation of this section, if *the public* attend to the proper working of it. The names of the Commissioners (c) would almost exclude the suspicion of any impropriety in the exercise of this extensive and important power. The public can also protect their own interests by attention, energy, and vigilance; and if they neglect them they must not expect much sympathy or any relief.

V. A duty of some importance is that conferred on the Special Commissioners by sec. 6 of the recent Act, by which they are enabled to give applicants a certificate that their fixed nets have been erected in pur-

(a) Mr. Foott, of Gortmore, county of Cork, in an excellent speech at Fermoy, February 16, showed the very disastrous effects of bag-nets and stake weirs in the Shannon estuary. Mr. Sinclair's pamphlet does the same in the North.

(b) The Commissioners must act according to the rules of common sense and common law, and take the ordinary meaning of *estuary* as given in the 13 & 14 Vict. c. 88, s. 1, and all dictionaries, to comprehend the portions of the river in which the tide ebbs and flows before its clear exit into the sea, through the headlands or *faucets terre*. No appeal lies from a "definition."

(c) September 25th, now generally known.

suance of the provisions of the 5 & 6 Vict. c. 106, the Act under which so many destructive and illegal fixed engines have also been erected.

Before granting any person a certificate under this section the Special Commissioners must, of course, give public notice of the application for such a certificate having been made to them, and will require all parties interested in opposing the claim, as well as the owner of the fixed net, to appear before them at a convenient time and place. The applicant must then give satisfactory proof, by documents and on oath, of the fixed net having been erected strictly in accordance with the various provisions of the 5 & 6 Vict. c. 106. The *onus probandi*, or obligation to prove the weir a lawful one, lies on the weir or net-owner in this and all other cases (a). He must prove his compliance with every provision of the Act, his having the particular estate (b) in the lands adjoining the sea-shore, which can alone give a colour of title to erect it; his having got his landlord's *previous* consent in writing when such consent is necessary, and in every respect his being within the restrictions and limitations of the Act of 1842. On such proof alone can he require the certificate of the Commissioners (c).

The investigation into the claims of the applicant

(a) All weirs are *prima facie* illegal. The claimant must prove his case to entitle him to a certificate; the facts are within his peculiar knowledge.

(b) *Anta*, 51.

(c) *Spierres v. Barker*, 1 T. R. 144; *R. v. Harrison*, Paley on Con. 45 (N.), 2nd ed., *Midland R. Co. v. Bromley*, 25 L. J., C. P., 94; *Templemore v. Allen*, 8 Ir. L. R. 199; *Marden v. Porter*, 7 C. B., N. S., 641.

will be in open court. Anyone will be entitled to be heard in opposition to the claimant; and either the party demanding the certificate or other person interested in the decision of the Commissioners, may appeal (a). If the certificate be refused, the fixed net is, of course illegal, and must at once be prostrated; if granted, the legality of the erection may yet be questioned as being injurious to navigation, a common nuisance to the public right of fishing, or in violation of any law in force in Ireland.

The claims for a certificate under this section will most probably be heard and decided on during the general inquiry as to all fixed nets which must shortly be made by the Commissioners (b).

VI. Cases relating to the removal of nets and weirs must be heard before all the Commissioners; and warrants for their removal must be signed by at least two of them; but the opinion of two binds all. Any other act authorised to be done by the Commissioners may be done by one of them; and a summons under their seal, and signed by anyone authorised by them, is to be deemed sufficiently executed (c). Their seal proves itself.

VII. The Commissioners have the largest powers of compelling the production of documents, deeds, books, and papers; of securing the attendance of witnesses and examining them on oath; and enforcing all their orders (d); and they may summon any person whom they think can give evidence on the subject of their inquiries.

(a) Secs. 5 & 6.

(b) Sec. 5 *vide ante*, 103.

(c) 26 and 27 Vict. c. 114, s. 35.

(d) 26 & 27 Vict. c. 114, s. 38; 5 & 6 Vict. c. 106, s. 111; 7 & 8 Vict. c. 108, s. 3; 13 & 14 Vict. c. 88, s. 14.

They will be much facilitated in the performance of their duties by their secretary being familiar with everything done under their predecessors in office, and having access to all official documents. The list of persons who have paid the licence duty on fixed engines, will at once tell them the names of the owners and persons interested in these engines to be summoned in every district; and the conservators can supply all deficiencies in other respects by a little exertion.

VIII. The Commissioners have also very extensive power of making bye laws for the protection and improvement of the fisheries. They may make any regulations which from time to time they may consider expedient for the registry of all boats (*a*) engaged in fishing, and may impose necessary restrictions for preserving order among the fishermen or in relation to any practice tending, in their opinion, to the injury of the fisheries (*b*). They have power to prohibit at any time or season the use of any engine or device for the capture of fish which, upon due inquiry, they shall deem injurious (*c*), and may interdict any mode of net-fishing which is detrimental to the free passage of fish (*d*). All bye-laws made by them require the confirmation of the Lord Lieutenant in council; and penalties not exceeding five pounds, and forfeiture of the engines improperly used contrary to the bye-law, may be declared in such bye-laws by the Commissioners, to be payable on

(*a*) Names of owners must be painted on all boats used in fishing under a penalty of not exceeding £2—5 & 6 Vict. c. 106, s. 81.

(*b*) Sec. 91 of 5 & 6 Vict. c. 106, 92 & 93 *et seq.*

;
(*c*) 8 & 9 Vict. c. 108.

(*d*) 13 & 14 Vict. c. 88, s. 44.

breach of any of their regulations (a). There are thus very few destructive modes or engines for capturing fish, or practices injurious to the fisheries, such as are alleged to be common in the Suir, that may not be checked by a judicious bye-law suited to the locality where it is desirable to restrain them. This power of making bye-laws prevents too minute general legislation, and may be rendered a most useful supplement to the fishery code.

IX. Orders, definitions, judgments, bye-laws, and decisions made by the Commissioners must be recorded in their office, and copies sent to the clerk of the peace of the county affected by them. A certified copy of the document thus lodged with the clerk of the peace is sufficient evidence of its existence and contents (b). No *certiorari* lies to quash any of these orders, decisions, judgments, or definitions; and they are not to be deemed invalid for want of form only (c).

Copies of the bye-laws, rules, and orders are also to be transmitted to the clerks of petty sessions, and a printed copy obtained from the clerks is evidence of the existence and due publication of the original. (d)

X. Other powers vested in the Commissioners with reference to fixed engines, fishing-weirs, mill-dams, and obstructions in rivers, &c., have been noticed sufficiently in the earlier chapters of this work, where their consideration seemed appropriate.

(a) Sec. 91 of 5 & 6 Vict. c. 106.

(b) 8 & 9 Vict. c. 108, s. 22; 7 & 8 Vict. c. 108, s. 3; 13 & 14 Vict. c. 88, ss. 28 & 38.

(c) Same section.

(d) 5 and 6 Vict. c. 106, s. 93. *Vide Appendix, Abstract of Bye-laws, p. ccxvi.*

CHAPTER XXII.

LAWS AND REGULATIONS AS TO OYSTER AND WHITE SEA FISHERIES.

I. Two rather important branches of the Irish fisheries still remain under the exclusive jurisdiction of the original Commissioners of Fisheries, all the other powers having been transferred to the Special Commissioners under the recent Act (*a*). These are the oyster and white-sea fisheries. The earlier fishery Acts contain many provisions affecting them which it will be necessary now to notice.

II. The first of the series 5 & 6 Vict., c. 106, sec. 3, provides that all fishermen and persons employed by them, may enter upon the beaches, strands, and waters adjoining the sea-shore, or any estuary where it may be necessary to carry on their fishing. They may also draw up and spread their nets and land their fish on those places, but they are not at liberty to erect any fixture thereon (*b*). They may also, for the purpose of watching the approach to the coast of herrings and other fish, enter upon any lands near to the fishing places convenient for that purpose. (*c*) They are not, however, authorised to enter upon any enclosed garden or any tillage land on which there is a growing crop.

(*a*) 26 & 27 Vict., c. 114, sec. 15.

(*b*) Sec. 3.

(*c*) Section 4.

Any person forcibly obstructing the exercise of the powers conferred by these sections may be fined a sum not exceeding five pounds (a). These or nearly similar privileges were first given by an early Irish Act, 10 Car. 2, sec. 2, cap. 24, and were adopted in that of 1842.

III. Powers are vested in the Commissioners to authorise occupiers of lands adjoining the sea-shore, or any other parties to lay down bait beds between high and low water mark, and penalties may be imposed on any parties taking bait from the beds so laid down without the consent of the owner (b).

IV. For the better regulation of sea fisheries, all vessels engaged in them are required to be registered and marked in the manner pointed out by the statutes, (c) and all fishing boats are to have the names and places of abode of their owners legibly painted on them, and any person found using boats not having the names of the owners painted on them in the manner directed by the Act, is liable to a penalty not exceeding two pounds; a similar penalty may be inflicted on any person using or taking boats or vessels without the permission of the owners (d).

V. The chief statutable regulations affecting the sea fisheries are those relating to the use of trawl and trammel and other nets, and dredging. Sea-nets or other fish-

(a) Sec. 5.

(b) 5 & 6 Vict., c. 106, sec. 13.

(c) 5 & 6 Vict., c. 106, sec. 15 & 16 & 81; 6 & 7 Vict., c. 79, convention between England and Ireland; 18 & 19 Vict., c. 101, as to oysters.

(d) Sec. 81 & 72, 5 & 6 Vict., c. 106.

ing engines are not to be covered with canvass, hide, or other materials by which unsizable and young fish may be taken and destroyed. (a) This prohibition does not extend to the engines used in dredging for shell fish: (b) an infringement of these provisions subjects the offender to a penalty not exceeding ten pounds and the forfeiture of the illegal net. It was forbidden also to set in the sea or tide-way any herring or trammel net, or to leave any drag or other net in the water between sun-rise and sun-set; (c) but the use of seines for pilchards and other fish than herrings was excepted from the restriction, subject to be controlled by any bye-law of the Commissioners. (d) All fishermen were required to haul their nets up and remove them before sun-rise. (e)

The use of any trawl or trammel net at any place or season where its use is prohibited by any bye-law of the Commissioners, made under the authority of the Act, subjects the offender to the forfeiture of his net and a penalty not exceeding twenty pounds.

Setting nets across the entrance of bays or estuaries, which is a practice preventing the entrance of shoals of herrings and other fish into bays, &c., may also be prohibited by a bye-law under a penalty not exceeding five pounds for its infringement. (f)

VI. The rigid restrictions contained in the clause

(a) Sec. 6.

(b) Same section, and most destructive to small fish, fish spawn.

(c) Sec. 7.

(d) Same sect., now altered, sec. 6.

(e) Sec. 8

(f) Secs. 9 & 10.

just adverted to against the use of herring, trammel, and other nets, between sun-rise and sun-set, were subsequently relaxed, and seines and trammels may now be used in the day time, except in such places and at such times as may be prohibited by any rules or regulations of the Commissioners. (a) The Commissioners have also power to permit by their licence, the use of weirs for the catching of white sea fish during the close season for salmon, if such weirs are legally held by charter or prescriptive right. (b)

VII. The Commissioners have also the fullest power of legislating, from time to time, by their bye-laws in the manner described in the preceding chapter, for the sea fisheries; of regulating the use of trammel and other nets, the size of the meshes, the nature of the engines, &c.; depositing ballast in tide-ways and harbours, (c) the registration of fishing vessels; and generally to make such bye-laws and regulations as they may consider calculated to promote the prosperity, or necessary to check practices injurious to the fisheries under their control. (d)

These powers have been frequently and judiciously exercised, and an abstract of the various bye-laws made by them to the 31st March, 1868, will be found in the Appendix.

The penalties for the commission of any of the prohibited acts varies. It is unnecessary to insert them here, as a reference to each section containing the prohibition will accurately show them.

(a) Sec. 7 of 7 & 8 Vict., c. 108, 8 & 9 Vict., c. 108, sec. 15.

(b) Sec. 39. (c) Sec 14.

(d) Secs. 91, 2, 3, *ante*.

VIII. The importance of the oyster fisheries as a source of wealth, of profitable employment, and pleasant food for numbers, has been slowly forcing itself into notice. The improvement of the oyster fisheries has been comparatively neglected, and the beds have become in many places nearly exhausted. The Irish fishery laws contain many excellent provisions for the regulation and improvement of these fisheries, and the Commissioners appear to have been most anxious to render the jurisdiction which they possess over them useful to the public. In one of their recent reports (a) however, it is stated that there has, of late, been not only a great scarcity; but a marked deterioration in the quality of oysters has been observed. The Commissioners have often endeavoured to call public attention to the great value and importance these fisheries might assume if properly attended to; and the falling off seems to have arisen from the ordinary wasteful mode, in which there has been a constantly fishing out old beds, without sufficiently providing fresh sources of supply. The principal clauses of the statutes relating to the oyster fisheries, shall now be stated.

IX. Oysters are peculiarly fitted to become the subject of "several fisheries" and of private property. They are "fixed like a plant to one dull spot," which can be readily distinguished by visible bounds and marks, and accordingly there are many well known "several" oyster fisheries in Ireland held under grant charter or prescription. The first fishery Act of the present code, 5 & 6 Vic. c. 106, therefore makes the stealing of oys-

(a) For 1862, a very concise and clear report on the oyster fisheries by Commissioner Barry. See also Report, 1856.

ters or oyster brood from any bed or laying, being the exclusive property of other persons, and sufficiently marked out and known as such—larceny; and unlawfully dredging for oysters within such fisheries was made a misdemeanor, and punishable by a fine not exceeding ten pounds, and imprisonment for a time not exceeding three months. (a) These provisions have been preserved in the recent Act, 24 & 25 Vict., c. 96, (b) which makes the stealing from such beds felony, and punishable as simple larceny, and the unlawful dredging therein a misdemeanor punishable by imprisonment for a time not exceeding three months, (c) with or without hard labour or solitary confinement; but floating oysters may be taken within the limits of any several oyster fishery without incurring those penalties.

X. The close season for oysters is the well known period between the 1st day of May and 1st of September, subject, however, to be changed by the Commissioners under their power of making bye-laws; (d) and dredging for or having any oysters in a person's possession during the close time, save in order to lay down new, or replenish old beds with brood, subjects the offender to a penalty not exceeding £5, and not less than ten shillings. (e)

The Commissioners have also power to alter the close season, and prohibit altogether dredging for oysters in any particular locality, if, after due inquiry they shall think it expedient, for any period of time not ex-

(a) Secs. 11 & 12, and secs. 16, 17, 18 of 8 & 9 Vict., c. 108 which apply both to natural and artificial oyster beds.

(b) Sec. 26.

(c) Humphrey's Justice, p. 62, 218.

(d) 5 & 6 Vict., c. 106, s. 32; 7 & 8 Vict., c. 108, s. 5.

(e) 5 & 6 Vict., c. 106, s. 36; 11 & 12 Vict., c. 92, s. 42.

ceeding three years. (a) The decision or order prohibiting such fishing must be published as directed by the Act. (b) They may authorise during the close time oyster brood to be dredged for in any natural public bed, below low water of lowest spring tides, to supply artificial beds. (c)

XI. A very useful power is now vested in the Commissioners for the promotion and improvement of the oyster fisheries, by which they can authorise the owner of land adjoining the sea, or any estuary where no public oyster fishery exists, to lay down oyster beds, and to hold the same as private and exclusive property. (d) Oyster beds thus laid down with the permission of the Commissioners, are entitled to the same protection as the "several" oyster beds protected by the 5 & 6 Vict. just referred to; and dredging or stealing from them subjects the offenders to the same penalties as if the offence was committed in an oyster bed, the exclusive property of any person by grant or prescription. (e) Any person entering on a several fishery on any pretence of fishing, without the authority of the owner, may be fined not less than ten shillings, nor more than five pounds. (f) The power of authorising persons to lay down artificial oyster beds, was at first limited to the portion of the shore between the high and lowest water-marks of spring-tides; (g) but they now have power to

(a) 7 & 8 Vict., c. 108, s. 5 & 6.

(b) Sec. 6.

(c) 8 & 9 Vict., c. 108, s. 19.

(d) 8 & 9 Vict., c. 108, s. 17.

(e) Secs. 17 & 18 of 8 & 9 Vict., c. 108; 24 & 25 Vict., c. 96, sec. 26.

(f) 11 & 12 Vict., c. 92, s. 41.

(g) 8 & 9 Vict., c. 108, s. 17 and s. 16.

permit the artificial beds to be made above or below these marks; and their permission duly given makes such artificial beds the exclusive property of the person laying them down, and they are entitled to all the privileges afforded by law for the protection of any such exclusive property. (*a*)

It will be seen from the Schedule in the Appendix how frequently and judiciously this power of authorising the laying down of the oyster beds has been exercised by the Commissioners. (*b*)

XII. The owners of oyster beds are authorised to appoint water-bailiffs; (*c*) and special powers are vested in the Commissioners (*d*) of making rules and regulations for the management, improvement, and mode of conducting the oyster fisheries. Perhaps then, a hope may be indulged that those fisheries, natural and artificial, may soon exhibit some revival of prosperity from the declining state to which the last Report laments that they have fallen.

XIII. The sea fisheries of Great Britain and Ireland generally, for oysters as well as other fish, are regulated by conventions between the countries of France and the United Kingdom; and the regulations adopted in the Acts giving effect to the conventions, and which need not here be set out, must be carefully attended to and observed. (*e*) The first convention prohibits oyster fishing between the 1st May and 1st September, and dredging for them between sunset and sunrise. (*f*)

(*a*) 13 & 14 Vict., c. 88, ss. 41 & 42.

(*b*) See Schedule of Oyster Beds, Appendix, page ccxvi.

(*c*) Section 21 of 8 & 9 Vict., c. 108.

(*d*) 8 & 9 Vict., c. 108, s. 20.

(*e*) 6 & 7 Vict., c. 79, 18 & 19 Vict., c. 101.

(*f*) Articles 46, 47; 6 & 7 Vict., c. 79.

CHAPTER XXIII.

PRIVATE RIGHTS OF FISHING, AND INJURIES TO.

I. The rights of fishing which the public enjoy in all navigable tidal waters, have hitherto demanded our chief attention ; they are of the greatest importance and mercantile value, and have excited most interest, and the recent Act is principally directed to secure these rights. Private rights of fishing, though connected with the legislation considered in the former chapters, have something peculiar, and are daily growing in value, and becoming more important as property. It hence becomes necessary to bestow some notice on them, in addition to that which they have incidentally received in the preceding pages of this work.

II. Private rights of fishing may be divided into three kinds. The first termed a "several" or free fishery ; the second, *riparian* rights, as those enjoyed by the proprietors of the banks adjoining rivers or lakes ; and lastly, common of fishing, such as that usually exercised by landlords and their tenants over these waters.

A "several" or "free" fishery, for it seems now that these terms mean the same thing (*a*) in a navigable

(*a*) Judgment, *Malcomson v. O'Dea* (House of Lords) in effect says so. Judgment obligingly lent me by Messrs. Smith & Whitestone.

river where the tide ebbs and flows, can only be claimed under a grant as old as the time of Henry II., or a regrant of a several fishery which then legally existed, (a) or by prescription from usage for a great length of time. (b)

In the Irish Fishery Acts(c) it means a right of fishing, legally enjoyed under any title, in waters navigable or not, exclusively of the public, and whether the soil under these waters belong to the same person as the fishery or to another. There may be a *several* fishery for one kind of fish in a navigable river vested in one person, and a public right of fishing in the same water for all other kinds of fish. Thus there may be a several oyster fishery and a public right of fishing in the same estuary. (d). This right of several fishing differs only from the ordinary Riparian rights of fishing in requiring much stricter proof. *Prima facie* the public enjoy, in all tidal navigable waters, the right to a common of fishing; any one, therefore, who would exclude the public must prove his title from the earliest times, and if he fails in his proof, the public title prevails. The very recent case in the House of Lords, *Malcomson v. O'Dea*, relating to the Shannon fishery, shows how strictly the title must be proved. In that case the title was really deduced from a period anterior to Magna Charta.

It is in such fisheries, even when well-known to be such, that the public often most wrongfully commit trespass under pretext of their common-law right, but

(a) *Ante*, 6, 13.

(b) *Ante*, 6, 13.

(c) 5 & 6 Vict., c. 106, and 13 & 14 Vict., c. 88, sec. 1.

(d) Selwyn's N. P., Fishery; *Hayes and Bridges*, 1 Ir. T. R. 391.

the Court of Chancery, when the title has been tried and proved at law, will grant an injunction against all parties, and this is the proprietor's best remedy. (a) An action will lie at the suit of the owner against any one disturbing him in the enjoyment of his several fishery. As the trifling distinctions between forms of actions are now abolished, it is unnecessary to trouble the reader as to the old distinctions between "trespass" and "case," and whether the first could be maintained for an injury to a several fishery unless the soil and freehold were in the owner of the fishery, or whether the second was the appropriate remedy: an *action* lies, and the form in which the tale of wrong is related is immaterial. (b)

III. The "several" or exclusive fishery, best known to all country gentlemen, is not that which by possibility may exist in tidal waters under ancient grants, but the right which every riparian owner of land adjoining a river or lake possesses at common law, of fishing *ad medium filum aquæ* of the river or lake bounding his property. He possesses, presumptively half the soil and bed of the river, as well as half of the flowing water over it for the purpose of fishing, which is one mode of taking the profits, now slight indeed, of the soil it covers. (c) The ownership of the soil or bed

(a) *Vide Mayor of York v. Pilkington*, 1 Atk, 282; *Lord Tenham v. Herbert*, 2 Atk. 483; *Ashworth v. Brown*, 10 Ir. C. C. 421, an able judgment of the present Master of the Rolls.

(b) See actions for injuries to several fisheries; *Holford v. Baily*, 13 Q. B., 426; *Little v. Wingfield*, 11 Ir. C. L., 63; *Donegal v. Templemore*, 9, do. 374.

(c) *Beauman v. Kinsella*, 8 Ir. C. L. R., 291; C. J. Lefroy's judgment cited *ante*, p. 157.

of the river, and of the fishing, are generally vested in the same person, but they may be disunited, one possessing the soil or bed, another possessing the several fishery in the river itself. (a) Thus, if an owner in fee grants the fishery, this makes the grantee, for all practical purposes, the proprietor of a "several fishery," while the property in the bed of the river remains in the grantor.

This exclusive right of fishing, dissevered from the ownership of the bed of the river, may also be claimed by prescription, and the English prescription Act (b) being now extended to Ireland, (c) facilitates very much a claim of prescriptive right to a several fishery being made, even against a riparian owner in fee, whose original claim may have been compromised by his tenant's neglect. Thus, in a recent case, where, after the expiration of a 99 years lease, the landlord brought an ejectment and recovered the possession under a *habere* of the lands demised, and of the soil and bed of the river, (part of the Shannon near Castle Connel), and conceiving that he had the clear right to the fishing in the river as incident to the ownership of its bed, brought an action against a gentleman for fishing in it without his permission; it was held that the defendant having enjoyed for 60 years the sole right of fishing in the portion of the river adjoining the lands thus held under the 99 years lease, gained a good title to the exclusion even of the landlord on the expiration of his

(a) Hall, D. J. M., 1, *Lord v. Sidney*, 12 Moore, P. C. C. 473.

(b) 2 & 3 Wm. 4, c. 271.

(c) 21 & 22 Vict., c. 42. But *vide* 28 as to public nuisances.

tenant's derivative interest. (a) It may not, however, be easy to see how such an enjoyment during a tenant's lease, which sufficiently accounted for it, can be an enjoyment as "of right," for a period of 60 years; and though the 8th section of the Act makes apparently no provision for such a case, yet the general rules of law do, and the exercise of the right being presumptively under a deed or grant, which entitled the tenant to give permission to any person, would seem to bring it under the exception in the 1st section, and the well established rule that to make the enjoyment one "of right," it must be so against all persons. (b) The case is one which makes it imperative on landlords to see that from time to time their rights of fishing and shooting are exercised either by themselves or by their orders, and evidence of this exercise should be possessed like perambulations of manors.

IV. The riparian rights of fishing in lakes, it has been already stated, are similar to those of the owners of lands adjoining rivers; and in a very recent case it seems to have been held by the Court of Common Pleas in Ireland that the law was not altered though the lake was in fact a navigable one; and that the public right of fishing presumptively existed only so far as the tide ebbs and flows (c).

The action was brought by a riparian owner of lands

(a) *Dwyer v. De Burgo*, Ex. Rel., J. S. Dwyer, Esq., the plaintiff, and the Issue Paper.

(b) *Clay v. Thackeray*, 9 C. and P. 47; *M'Donnell v. M'Kinty*, 10 Ir. C. L., 514; *Bright v. Walker*, 1 C. M. and R. 211; *Warburton v. Parke*, 2 H. and N., 64; *Beauman v. Kinsella*, 8 Ir. C. L., 291.

(c) *Bloomfield v. Johnson*, sec. 5 and 6 Vict. c 106, s. 114.

adjoining Lough Erne for trespass on his several fishery. The defendant pleaded that it was a public navigable lake, and as one of the public he had a right to fish in it. Replication that the tide did not ebb and flow in the lake. To this there was a demurrer; and the court held that the public common law right of fishing in navigable waters only existed where the tide ebbs and flows. The case, however, is not yet concluded, and many points remain over for future discussion and litigation (a). There may, however, exist a public right of fishing in an inland water where the tide does not ebb and flow; and such is assumed to be the law in the Fishery Acts (b); and in fact it is exercised as such in parts of the River Suir. The public, however, cannot, except in such a royal river, claim the right of fishing (c). It exists in the owners of the adjoining lands.

V. The proprietor of a several fishery, in tidal or other waters, has the property in all fish caught within its limits. Of course if he permits anyone to fish in his waters, the fish becomes the property of the captor (d).

VI. A common of fishing is a right of fishing in common with other persons in a stream or river, the bed of which belongs to a third party.

(a) *Bloomfield v. Johnson*, C. P., M. T., 1861. Ex. Rel. R. Dowse, Esq., Q.C. Paper book kindly lent by Mr. Lawder.

(b) 5 & 6 Vict., c. 106, s. 114 and others.

(c) *Bland v. Lipscombe*, 4 Ell. & B. 713; *Attorney-General v. Mathias*, 4 K. & J. 579.

(d) *Blade v. Higgs*, 12 C. B. R., N.S., 501; *Lonsdale v. Rigg*, 1 H. and N. 924.

This does not differ in any respect from any other right of common. (a). The right which landlords generally retain by the ordinary exception in leases, is such a common of fishing. The exception operates as a grant by the tenant of an interest in the lands demised to him, (b) and being a grant of a profit a *prendre*, may be exercised by the landlord himself, or any one authorised by him, as his servant or otherwise. (c) Leases occasionally reserve to the landlord the sole right of hunting, fishing, and fowling, and then the landlord is proprietor for all practical purposes of a several fishery.

VII. The various Fishery Acts make the entry by any person or persons who are not authorised by the owner, lessee, or occupier thereof, upon a several fishery, for the purpose, or under the pretence, of killing fish therein, or taking fish therefrom, an offence punishable in a summary way by fine not exceeding five pounds, nor less than ten shillings. (d) The wrongful entry upon any lands for the purpose, or under the pretext of fishing, without the written authority of the owner, is punishable by fine not exceeding ten pounds. (e)

Taking fish wrongfully out of a pond, or similar places, subjects the offender to a fine not exceeding ten pounds. (f)

(a) Shelford, R. P. A., 47; Salk., 637.

(b) *Wickham v. Hawker*, 7 M. & W., 63.

(c) *Wickham v. Hawker*, 7 H. L. C. 331; *Bruce v. Halliwell*, 29 L. J., Ex., 297; *Foot v. Hudson*, 9 Ir. C. L. R., 203; 10 do., 509.

(d) 11 & 12 Vict., c. 92, s. 41, general.

(e) 5 & 6 Vict., c. 106, s. 71.

(f) Section 79. As to oysters, see s. 13.

Such an offence may also become the subject of larceny. (a)

VIII. Penalties for any of these offences are recoverable in a summary way before justices at Petty Sessions.

It is on such occasions, prosecutions for injuries to private rights, "several fisheries," for oysters in tidal waters, or for other fish in rivers and lakes, that questions of title are frequently set up by the offenders to oust the jurisdiction of the justices.

The allegation of title is very frequently a mere audacious assertion, incapable of even the least proof, but too easily accepted by the justices as an excuse for not deciding upon the case. This saves trouble, and seems self-denial. They should always satisfy themselves that there is a *bonâ fide* question of title in the offender or party under whom he justifies. If the complainant is a riparian occupier, or owner of lands in which the ponds, &c., are, the claim of title to fish in his waters, in any one else but his landlord, must in general be wholly unfounded, and a reckless assertion. The justices should satisfy themselves of there being a fair allegation and claim of title to do the act complained of. The *occupier's title* is presumptively good against *any one* but some person to whom he has given permission. (b) The mere assertion by the offender of right in himself and every one else to fish or sport on the lands, although he believes in its truth, without showing any title, does not oust the magistrate's jurisdiction, (c)

(a) 24 & 25 Vict., c. 96, s. 24; Humphreys, 63.

(b) As to what questions of title oust the justices' jurisdiction, see Levinge, 26, 28; *Reg. v. Cridland*, 9 Jur., N. S., 1213; *Legg v. Par-due*, 3 L. T., N. S., 371.

(c) *Leatt v. Vine*, 30 L. J., M. C., 207.

nor will the mere denial of the occupier's title; he must shew, or offer to show, a *bona fide* claim of title in himself, or those under whom he justifies (*a*). If the complainant's title is once clearly established at law, a prohibition will not afterwards be granted to prevent the justices from using their summary jurisdiction to protect fishery property from trespassers (*b*). The claim of title must in all cases be *bona fide*, and of this magistrates are entitled to judge. (*c*) A claim made by the public to fish in private waters can be rarely well founded; and it was reluctantly an order for a prohibition was lately granted by Judge Fitzgerald. The doubts of such a judge are strong indications of what the law is, and how far the jurisdiction of magistrates may be safely exercised (*d*.)

(*a*) *Cornwall v. Saunders*, 32 L.J., M.C., 6.

(*b*) *Ashworth v. Brown*, 7 Ir. Jur. 315; S. C. 10 Ir. Ch. C.

(*c*) *Ex parte Higgins*, 10 Jur. 838.

(*d*) *The Queen v. Justices at Ballymoney Sessions*. Mr. Falkiner applied for a conditional order for a *certiorari* to remove five convictions had before the magistrates at the Ballymoney Sessions against John Taggart and others for fishing in the river Bann. There were two affidavits made to ground the application, setting out very fully the proceedings before the magistrates, and a clear question of title was involved, which ousted their jurisdiction. It was not controverted that there existed a right of fishing for salmon by charter excluding the rights of the public; but the defendants and others gave evidence to show that for a period beyond living memory they exercised the right of fishing for trout in the place in question.

Judge Fitzgerald inquired if it was the riparian proprietors of the soil that fished for salmon.

Counsel replied that it was not, but those who claimed rights under the patent or charter; and he submitted that as to the trout fishing

The Fishery Acts are remedial, and for the benefit of the public; and a fair and liberal construction should be given to them. The magistrates often require most strict, direct proofs of any offence alleged to be committed, and are far too much inclined to give effect to cunning evasions rather than to the laws. "Justices have as much right to infer from circumstances that parties have committed an offence against the game or fishery laws as any other tribunal. Circumstantial evidence is a large and important branch of evidence, and frequently to be relied on equally with or in a greater degree than other evidence." The case in which these sentences were uttered by the Chief Justice of the Common Pleas in England, was one relating to the game laws; and its good sense, it is hoped, will recommend the adoption in this country of similar common sense rules of construction (a).

Malicious injuries to fish-ponds or other private fisheries are punishable as misdemeanors; and the value of legal weirs illegally and wilfully destroyed may be recovered as in similar cases of destruction of private property by presentment (b).

there was such a dedication to the public by length of time as gave them a title which not only ousted the jurisdiction of the magistrates, but conferred upon them a title in a court of law.

Judge Fitzgerald felt a difficulty in holding that in a river which was not navigable such a right as claimed could exist, the persons asserting it not being riparian proprietors; but his lordship granted a conditional order.

(a) *Brown v. Turner*, 1 N. R. 283. English justices, however as appears from the *Field*, Sept. 26th, 1863, sometimes make as singular decisions as the Irish on fishery cases.

(b) 24 & 25 Vict., c. 97, s. 39; 8 & 9 Vict., c. 108, s. 7.

CONCLUSION.

WITH the chapter on private rights concludes this review of the Irish Fishery Laws, the effect and operation of the old Statutes, and the design and hoped for working of that recently passed.

Nothing can be more disastrous than the present state of the Irish Fisheries of all kinds ; that of herrings diminished, that of oysters deteriorated, that of salmon declining ; the fishermen resorting to the poor-house, the fishing population rapidly dying out, and the boats lying idle on the shore. Naturalists tell us of the wonderful fecundity of fish, and the provision made for their almost exhaustless supply. Authentic reports tell us of rivers fished out, of shoals of fish diminished or disappearing, and the bounties of Providence wasted and destroyed by man's improvidence. How truly then may it be said that "the fishers mourn ; and all they that cast angle into the brooks lament, and they that spread nets upon the waters languish." Can it be reasonably hoped that the utter exhaustion of the Irish Fisheries may be prevented, and that in a few years they may be restored to their former prosperity ? At least, however, the earnest wish may be indulged that "the waters may be healed, and that the fishers may spread forth their nets ; and that the fish shall be according to their kinds, as the fish of the great sea, exceeding many."

Fishery Acts of Ireland.

5 & 6 VICT. c. 106.

7 & 8 VICT. c. 108.

8 & 9 VICT. c. 108.

9 & 10 VICT. c. 114.

11 & 12 VICT. c. 92.

13 & 14 VICT. c. 88.

26 & 27 VICT. c. 114.

FISHERY ACTS.

5 & 6 VICTORIA, CAP. 106.

An Act to regulate the *Irish* fisheries.

[10th August 1842.]

‘WHEREAS it is expedient to consolidate and amend the several Acts now in force in *Ireland* relating to the fisheries thereof; and that for such purpose all enactments now in force in *Ireland* relating to the fisheries thereof should be repealed:’ Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act the several Acts and parts of Acts hereinafter mentioned, so far only as they or any of them relate to the fisheries of *Ireland*, and all Acts or parts of Acts continuing or perpetuating the same, so far only as relates to such continuation or perpetuation, and all enactments whatsoever now in force in *Ireland* relating to the fisheries thereof, shall be repealed (except only so far as is herein-after excepted and provided for); that is to say,

Repeal of Fishery
Acts so far as
regards Ireland.

An Act passed in the Parliament of *Ireland* in the fifth year of the reign of King *Edward* the Fourth, intituled *An Act that no ship or other vessel of any foreign country shall go to fishing in the Irish countries; and for custom to be paid off the vessel that cometh from foreign lands to fishing:* 5 Edw. 4, c. 6.

- 28 Hen. 8, c. 22. So much of an Act passed in the said Parliament in the twenty-eighth year of the reign of King *Henry* the Eighth, intituled *An Act for the wears upon the Barrow and other waters in the County of Kilkenny*, as relates to the destroying of salmon fry therein :
- 11 Eliz c. 4. An Act passed in the said Parliament in the eleventh year of the reign of Queen *Elizabeth*, intituled *An Act for the preservation of salmon fry and eel fry* :
- 10 Car. 1, sess. 2, c. 24. Two Acts passed in the said Parliament in the tenth year of the reign of King *Charles* the First, one in the second session of such year, intituled *An Act for the better preservation of fishing in the Counties of Dublin, Wicklow, Wexford, Waterford, Cork, Kerry, Clare, Galway, Mayo, Sligo, and all other counties, and places within the realm of Ireland, and the dominions thereof adjoining to the sea coast, and for the relief of balkers, corders, and fishermen against malicious suits*, and the other in the third session of such year, intituled *An Act against the killing of young spawn and fry of eels and salmon* :
- 10 Car. 1, sess. 3, c. 14.
- 10 W. 3, c. 8. So much of an Act passed in the said Parliament in the tenth year of the reign of King *William* the Third, intituled *An Act for the preservation of the game, and the more easy conviction of such as shall destroy the same*, as relates to the preservation of fish, and as prevents the persons therein specified from fishing :
- 2 G. 1, c. 21. An Act passed in the said Parliament in the second year of the reign of King *George* the First, intituled *An Act to prevent the destruction of salmon fry, and better preserving the salmon fishery in this kingdom* :
- 12 G. 1, c. 7. An Act passed in the said Parliament in the twelfth year of the same reign, intituled *An Act for the better preserving the salmon fishery of this kingdom* :
- 5 G. 2, c. 11. So much of an Act passed in the said Parliament in the fifth year of the reign of King *George* the

Second, intituled *An Act for explaining and amending an Act made in the twenty-eighth year of the reign of King Henry the Eighth, intituled 'An Act for the wears upon the Barrow and other waters in the County of Kilkenny,'* as relates to fishermen or apprentices fishing in navigable rivers or waters :

An Act passed in the said Parliament in the thirty- 31 G. 2, c. 13.

first year of the same reign, intituled *An Act to explain and amend the several laws made in this kingdom for the more effectual preservation of salmon fish and fry, and for the better improvement of the herring fishery :*

An Act passed in the said Parliament in the third 3 G. 3, c. 35.

year of the reign of King George the Third, intituled *An Act to explain and amend the several laws made in this kingdom, for the effectual preservation of salmon fish :*

So much of an Act passed in the said Parliament in 13 & 14 G. 3, c. 41.

the session holden in the thirteenth and fourteenth years of the same reign, intituled *An Act for renewing and continuing several temporary statutes, and to prevent the destructive practice of trawling for fish in the bay of Dublin,* as relates to the trawling for fish in the bay of Dublin :

So much of an Act passed in the said Parliament in 15 & 16 G. 3, c. 81.

the session holden in the fifteenth and sixteenth years of the same reign, intituled *An Act for amending and rendering more effectual an Act passed in the last session of Parliameut, intituled 'An Act for renewing and continuing several temporary statutes, and to prevent the destructive practice of trawling for fish in the bay of Dublin ;' and for explaining and amending one other Act made in the thirteenth and fourteenth years of his present Majesty, intituled 'An Act for explaining an Act passed in the fifth year of his present Majesty's reign, intituled 'An Act for erecting and establishing infirmaries or hospituls in this kingdom,'* as relates to the practice of trawling in the broad of Lambay :

- 17 & 18 G. 3, c. 19. An Act passed in the said Parliament in the session holden in the seventeenth and eighteenth years of the same reign, intituled *An Act for the better preservation of fish in rivers, lakes, and inland waters :*
- 23 & 24 G. 3, c. 40. An Act passed in the said Parliament in the session holden in the twenty-third and twenty-fourth years of the same reign, intituled *An Act for the protection and improvement of the inland fisheries of this kingdom :*
- 26 G. 3, c. 50. An Act passed in the said Parliament in the twenty-sixth year of the same reign, intituled *An Act to explain and amend an Act passed in the twenty-third and twenty-fourth years of his present Majesty, intituled ' An Act for the protection and improvement of the inland fisheries in this kingdom : '*
- 32 G. 3, c. 40. So much of an Act passed in the said Parliament in the thirty-second year of the same reign, intituled *An Act for reviving and continuing certain temporary statutes, as relates to the river Anna Liffey, or any right of fishery therein :*
- 33 G. 3, c. 50. An Act passed in the said Parliament in the thirty-third year of the same reign, intituled *An Act for the encouragement of the fisheries in this kingdom, and for continuing certain Acts respecting the same :*
- 36 G. 3, c. 52. An Act passed in the said Parliament in the thirty-sixth year of the same reign, intituled *An Act for continuing and amending the several Acts for the further improvement and extension of the fisheries on the coasts of this kingdom :*
- 39 G. 3, c. 51. An Act passed in the said Parliament in the thirty-ninth year of the same reign, intituled *An Act to revive and amend an Act passed in the twenty-sixth year of the reign of his present Majesty, intituled ' An Act to explain and amend an Act passed in the twenty-third and twenty-fourth years of the reign of his present Majesty, intituled " An Act for the protection and improvement of the inland fisheries of this kingdom : " '*
- 59 G. 3, c. 109. An Act passed in the Parliament of the United King-

dom in the fifty-ninth year of the same reign, intituled *An Act for the further encouragement and improvement of the Irish fisheries* :

So much of an Act passed in the said Parliament of 5 G. 4, c. 64. the United Kingdom in the fifth year of the reign of King *George* the Fourth, intituled *An Act to amend the several Acts for the encouragement and improvement of the British and Irish fisheries*, as relates to *Ireland* :

So much of an Act passed in the said Parliament of 7 G. 4, c. 34. the United Kingdom in the seventh year of the same reign, intituled *An Act to amend an Act of the fifth year of his present Majesty for amending the several Acts for the encouragement and improvement of the British and Irish fisheries*, as relates to *Ireland* :

An Act passed in the said Parliament of the United 10 G. 4, c. 33. Kingdom in the tenth year of the same reign, intituled *An Act to amend the several Acts for the encouragement of the Irish fisheries* :

So much of an Act passed in the said Parliament of 1 W. 4, c. 54. the United Kingdom in the first year of the reign of King *William* the Fourth, intituled *An Act to revive, continue, and amend several Acts relating to the fisheries*, as relates to *Ireland* :

An Act passed in the said Parliament of the United 1 & 2 Vict. c. 76. Kingdom in the session holden in the first and second years of the reign of her present Majesty, intituled *An Act to explain and amend certain provisions in Acts of the Parliament of Ireland for the protection of fisheries in that kingdom* :

And the said several herein-before recited Acts and parts of Acts, in so far only as they or any of them relate to the fisheries of *Ireland*, and all Acts or parts of Acts continuing or perpetuating the same or any part thereof, so far only as relates to such continuation or perpetuation, and all enactments whatsoever now in force in *Ireland* relating to the fisheries thereof, are hereby repealed accordingly, save and except so far as the said Acts or parts of Acts or

Recited Acts, and parts of any other Acts relating to Irish fisheries, repealed.

enactments respectively may repeal the whole or any part of any other Act or Acts; and also save and except as to any offences, penalties, or matters committed, incurred, or done, or which may be committed, incurred, or done, against or under the provisions of the said Acts or any of them before the passing of this Act; all which offences shall be dealt with, considered, and punished, and all such penalties levied, and all such matters deemed good, valid, and effectual, to all intents and purposes as if this Act had not been passed: Provided always, that nothing herein contained shall be construed to repeal any enactments or provisions of the said Acts or any of them, which relate to piers or quays, or assisting poor fishermen, or any powers in respect thereof now vested in the Commissioners of Public Works in *Ireland*, or any monies applicable to such purposes in the hands of the said Commissioners of Public Works, but that all such enactments and provisions relating to piers or quays, or the assistance of poor fishermen, and all such powers in respect thereof, or of the application of the monies applicable to such purposes, shall remain in full force and effect: Provided also that nothing herein contained shall be construed to repeal an Act passed in the said Parliament of the United Kingdom in the session holden in the sixth and seventh years of the reign of King *William the Fourth*, intituled *An Act for establishing a joint-stock company for the prosecution and extension of the fisheries off the shores of Ireland, and for the improvement of the sea coast in connexion with such fisheries*, or an Act passed in the said Parliament of the United Kingdom in the first year of the reign of her present Majesty, intituled *An Act to enable Edward Joshua Cooper Esquire to establish and protect a salmon fishery upon the lakes and rivers Owenmore and Arrow, and also within the bay of Ballisodare, in the County of Sligo in Ireland*; save that the said *Joshua Edward Cooper*, his heirs and assigns, shall not, from and after the passing of this Act, use or

6 & 7 W. 4. c.
cxxx. and 7 W. 4,
and 1 Vict. c.
lxxxix. not
repealed.

exercise any rights, powers, or authorities for the preservation or protection of the free fishery in the said Act mentioned, or for the detection, prosecution, conviction, or punishment of trespassers on such fishery, other than such as after the passing of this Act may be lawfully enjoyed, used or exercised by the proprietor of any like fishery under and by virtue of the provisions of this Act: Provided, also, Provido as to the close season. that nothing herein contained shall repeal or be construed to repeal so much of the said Acts or any of them as regulate, fix, and determine the close season for salmon until the first day of *January* one thousand eight hundred and forty-four; and that until such first day of *January* one thousand eight hundred and forty-four the said close season shall remain and be observed as now regulated, fixed, and determined by the said Acts or some of them; and that from and after such first day of *January* one thousand eight hundred and forty-four the said parts of such Acts so to remain in force until such day shall be and the same are hereby repealed.

II. And be it enacted, that the Commissioners of Public Works in *Ireland* for the time being shall be and they are hereby constituted and appointed commissioners for the execution of this Act, and that all and every the powers and authorities in and by this Act given may be exercised by the said commissioners or any one or more of them; and that it shall and may be lawful for the said commissioners, with the consent and approbation of the commissioners of her Majesty's treasury, from time to time to appoint during pleasure such and so many persons to be inspectors of fisheries, and also such additional clerk or clerks, or other officers as may be necessary for the purposes of this Act; and that it shall and may be lawful for the said Commissioners of Public Works to pay to the said inspectors, and to such clerks or other officers so appointed as aforesaid, such sum or sums by way of salary or

The Commissioners of Public Works to be the Commissioners for this Act.

remuneration as the said Commissioners of her Majesty's Treasury, or any three or more of them, shall fix and appoint.

Fishermen, &c.
may use waste
shores, for the
purposes of
fishing;

III. And be it enacted, that it shall and may be lawful for all fishermen and persons employed by them to enter upon all such beaches, strands, and wastes on or adjoining the sea shore, or any estuary, as may be necessary for the purpose of carrying on any herring or other sea fishing, and also to draw up and spread their nets and land their fish upon any such beach, strand, or waste: provided nevertheless, that they shall not erect any fixtures or fixed nets thereon, save as herein-after provided.

or for watching
for fish.

IV. And be it enacted, that it shall be lawful for all watchmen, directors, and guiders of fishermen, and all such fishermen themselves, and such other persons as shall necessarily attend the nets or fishings at the times of fishing for herrings, pilchards, and other sea fish, to enter and go into and upon any lands which do lie or adjoin near unto any fishing place, fit, convenient, and necessary to watch and to draw or carry the fish on shore, and there to watch for the said fish, and to direct and guide the said fishermen which shall be upon the sea and sea coasts for the taking of the said fish; provided that no person shall be empowered or authorized by this act to enter in or upon any enclosed garden, or any tillage land with a growing crop thereon.

Penalty on persons
resisting or
obstructing fish-
ermen in using
such shores, &c.

V. And be it enacted, that if any person shall resist or forcibly obstruct any fisherman or person employed by him in entering upon and using in the manner and for the purposes aforesaid the said beaches, strands, wastes, and other lands, save gardens and lands with a growing crop as aforesaid, every person so offending shall for every such offence forfeit and pay any sum not exceeding five pounds.

VI. And be enacted, that no net or other engine covered with canvas, hide, or other material, by which unsizeable and young fish may be taken or destroyed, shall be used on the sea coast, or within any estuary, except for the purpose of dredging for shell fish, and every person offending by such use of any such net or engine shall forfeit the same, and shall also for every such offence forfeit and pay any sum not exceeding ten pounds.

*Regulations as
sea nets.*

VII. And be it enacted, that no person shall, at any time between sunrise and sunset, set, either in the sea or within the tide way in any estuary, any sea net for the catching of herrings, or any tram-mel net, or leave any drag or other net in the water between sunrise and sunset, except stake or fixed nets for the catching of salmon, as is hereinafter provided, and save also seines or drift nets for pilchards, or fish other than herrings, provided such stake or fixed nets and such seines or drift nets be used at such times and places as may not be prohibited by the bye-laws hereinafter mentioned; and every person offending by setting or leaving set any such net, save as aforesaid, shall forfeit the same, and shall also for every such offence forfeit and pay any sum not exceeding ten pounds.

*No herring or
other nets, save
as herein pro-
vided, to be shot
or left floating in
the day-time.*

VIII. And be enacted, that every person who shall, between sunset and sunrise, have set, either in the sea or within the tide way in any estuary, any such net as is hereby prohibited from being left set or in the water between sunrise and sunset, shall before sunrise haul up and remove such net or nets; and every person offending by not so hauling up and removing such net before sunrise shall forfeit the net so set or in the water, and shall also forfeit and pay any sum not exceeding five pounds, unless it shall be proved to the justice before whom complaint shall be made against such person that he was prevented by sudden storm or stress of weather from hauling up and removing such net.

*Penalty on fisher-
men not hauling
up their nets.*

Penalty on use of
trawl and trammel
nets.

IX. And be it enacted, that every person who shall use any trawl or trammel net at any season or any place, either in the sea or within the tide way in any estuary, when or where the use of the same shall have been prohibited by any bye law to be made as hereinafter mentioned, shall forfeit every such net so used, and shall for every such offence also forfeit and pay any sum not exceeding twenty pounds.

Nets shall not be
set or lines laid
contrary to the
bye-laws.

X. "And whereas shoals of herrings and other fish are frequently prevented from entering bays and estuaries by persons setting nets at or across the entrance of such bays and estuaries;" be it therefore enacted, that if any person shall set any net at or across the entrance of any bay or estuary in any place or at any time which shall be prohibited by any such bye law, every person so offending shall forfeit and pay for each such offence any sum not exceeding five pounds.

Penalty for steal-
ing oysters or
oyster brood.

XI. And be it enacted, that if any person shall steal any oysters or oyster brood from any oyster bed or laying, being the exclusive property of any other person or persons, and sufficiently marked out and known as such, every such offender shall be deemed guilty of larceny, and being convicted thereof shall be punished accordingly: provided always, that nothing herein contained shall extend to any case where the party taking such oysters, or accused of stealing the same, shall have acted under a fair and reasonable supposition, that either he himself or any other person in whose right or by whose authority he acted, or the public at large, had a right to take the said oysters, and to convert the same to his or their own use.

Penalty for un-
lawfully using
dredges, &c.,
within limits of
oyster fisheries.

XII. And be it enacted, that if any person shall unlawfully and wilfully use any dredge or any net, instrument or engine whatsoever, within the limits

of any such oyster bed or laying, being the exclusive property of any other person or persons, and sufficiently marked out and known as such, for the purpose of taking oysters or oyster brood, although none shall be actually taken, or shall with any net, instrument, or engine, drag upon the ground or soil of any such fishery, every such person shall be deemed guilty of a misdemeanor, and being convicted thereof shall be punished by fine or imprisonment, or both as the court shall award, such fine not to exceed ten pounds, and such imprisonment not to exceed three calendar months; and it shall be sufficient in any indictment or information to describe, either by name or otherwise, the bed, laying or fishery in which any of the said offences shall have been committed, without stating the same to be in any particular parish, barony or county: provided always, that nothing herein contained shall extend to any case where the party trespassing as aforesaid shall have acted under a fair and reasonable supposition, that either he himself, or any other person in whose right, or by whose authority he acted, or the public at large, had a right so to do; and provided also that nothing herein contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument, or engine adapted for taking floating fish only.

Not to extend to persons fishing for floating fish.

XIII. 'And whereas it is expedient to increase the means of procuring 'bait for the line fishery,' be it therefore enacted, that it shall be lawful for the owner or occupier of any land bordering on the sea, or any estuary, with the permission of the said commissioners, or for any person or persons with the consent of such owner or occupier, and with the permission of the said commissioners, to form bait beds between high-water and low-water mark, and in all such other places adjacent to their respective portions of land as shall be suitable for the purpose;

Bait beds may be made.

and it shall be lawful for the several persons planting the same to hold them as private property, and to exercise an exclusive control over them, so long as they shall be owners or occupiers of such land : provided always, that the formation and planting of such bait beds as aforesaid shall not give any exclusive right or title to the occupancy of the said shore, except for the purpose aforesaid, or to the appropriation of any public banks and beds at present resorted to for bait, but that the rights hereinbefore granted are to be considered as exclusively applying to places where no such public banks or beds at present exist ; saving to the Queen's most excellent Majesty, and all the subjects of this realm, the free and full exercise and enjoyment of all other rights of fishing, or other rights whatsoever in or along the said sea shore or coast, or the shore of any such estuary as aforesaid, subject to the provisions herein contained ; and provided further, that if, after the formation and planting of such new beds or banks as aforesaid, any person shall interfere with or take away any of the bait from such bank or bed, without the consent of the owner or occupier, every person so offending shall forfeit and pay any sum not exceeding five pounds.

Penalty on persons discharging ballast in improper places.

XIV. And be it enacted, that no person shall throw out or unlade from any vessel the ballast thereof or any part thereof within any estuary, harbour, or place, unless where the same may be allowed by the said commissioners or by the local regulations of such harbour or place ; and any person throwing out or unlading any ballast, unless where so allowed, or the master or owner of such vessel, at the election of the person prosecuting, shall, for every such offence forfeit and pay any sum not exceeding ten pounds.

The coasts of Ireland may be divided into districts for the

XV. And be it enacted, that, for the purpose of facilitating the due execution of this Act, the said commissioners shall divide the coast of *Ireland* into

such, and so many districts, to be designated by such names, marks, or letters, as they shall deem fit, and such division and designation shall be published by the said commissioners in the *Dublin Gazette* and provincial newspapers circulating in the counties adjoining the coast, and shall also be entered in the bye-laws hereinafter directed to be made by the said commissioners.

purposes of this Act.

XVI. And be it enacted, that at such of the Coast Guard Stations and Custom House Offices within such districts respectively as the said commissioners shall appoint, subject to the consent and approbation of the Commissioners of her Majesty's Customs, there shall be kept by such officer as the said Commissioners of Public Works may appoint, in a book or books to be provided for that purpose, a registry of all vessels engaged in fishing, and belonging to places within the district in which such Coast Guard Station or Custom House office may be situate together with the names of the owners of such vessels and of the ports to which the same may respectively belong, and the number of men usually employed in each such vessel; and the owners of such vessels are hereby required to have registered accordingly their names, and the names of their vessels, and the ports to which they severally belong, and the number of their men; and the owner of each vessel shall be furnished by the registering officer with a certificate of such registry signed by him, and pay such sum as the said last-mentioned commissioners may direct, not exceeding the sum of one shilling for each such certificate; and such certificate shall be conclusive evidence of such registration, and the number, mark, or letter which shall be assigned to each vessel by the registering officer, together with the names of the vessel, of the owner, or some one of the owners where more than one, and of the port to which such vessels belongs, shall be painted on the stern of such vessel, and such number and mark or letter shall be also painted on the sails and

Fishing vessels on the coast of Ireland to be registered and marked.

Penalty for
using vessels
not registered.

bows or quarters, and on the buoys attached to the nets used with such vessel, or on small boards permanently attached to such nets for the purpose, in such manner, and in figures of such dimensions as the said commissioners shall direct; and if any vessel shall be used for fishing on any part of the coast of *Ireland*, or within any estuary thereof, at any time after the first day of *January*, one thousand eight hundred and forty-three, which vessel shall not have been so duly registered as aforesaid, or on the stern whereof the name of such vessel, that of the owner or one of the owners, and of the port to which such vessel may belong, shall not be so painted, or on the sails, bows, and quarters, and buoys, or small boards, attached to the nets whereof such number or mark or letter shall not be so painted, the owner, master or chief officer of such vessel so used shall for every such offence forfeit and pay a sum not exceeding ten pounds: provided always, that when any vessel shall not be permanently engaged in fishing, the number, or mark, or letter may be temporarily attached to the sails, bows, and quarters of such vessel, in such manner, and for such time as shall be permitted by the said commissioners; and provided also, that vessels belonging to places out of *Ireland* may, for the purposes of this Act, be registered at the Coast Guard Station or Custom House Office, as the case may be, of any district within or adjoining which such vessel shall be engaged in fishing for the time being, the owner, master, or chief officer of any such vessel being subject nevertheless in both last-mentioned cases to forfeit and pay a sum not exceeding ten pounds if he shall neglect to comply with the provisions aforesaid.

All bodies corporate, &c. empowered to demise lands for the purposes of this Act.

XVII. 'And whereas it is expedient to encourage the erection of stores and other buildings which may be required for the purpose of curing and preserving fish;' be it therefore enacted, that it shall and

may be lawful for all bodies politic, corporate, or collegiate, aggregate or sole, and all bishops and other ecclesiastical persons as to lands held by them in right of their respective dignities or benefices, and for every person or persons seised in fee tail or for life, and for the trustee or trustees, guardian or guardians of any minor, or the committee or committees of any idiot or lunatic, seised as aforesaid of and in any lands near or adjacent to the sea coast of *Ireland*, to demise to any person (who shall covenant and agree with such bodies politic, corporate, collegiate, aggregate or sole, or with such tenants in tail or for life, or such trustees, guardians, or committees as aforesaid, within the space of seven years from the commencement of such lease, to lay out a sum not less than the amount of five years' rent, to be reserved by the said lease or leases, in good and substantial buildings upon the same,) any quantity of ground for the aforesaid purposes, not exceeding ten acres statute measure in any one such demise, for any term of years, or for the term of three lives, with covenant for renewal for ever on payment of a peppercorn by way of fine for each renewal, at the highest and best rent that can be got for the same, without any fine or foregift to be taken for making such lease : provided always, that such ground so demised be not more than one mile distant from the sea shore, or be not part or parcel of the demesne usually held or occupied with the mansion house of the owner of the said lands, and provided the said demise be made by deed, and duly executed in the presence of two credible witnesses, and provided the said commissioners shall by endorsement thereon certify their consent and approbation, and that the tenant do execute a counterpart thereof in like manner in the presence of two credible witnesses ; and in case the lessee or his representatives shall duly fulfil his covenants for building as aforesaid, the premises granted and demised by such lease shall be held and enjoyed by

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such tenant, his heirs and assigns, according to the nature of the tenure, and notwithstanding any judgment or charge affecting the said lands, or any limitations in any will or settlement restraining such lease as aforesaid.

Persons possessed of a several fishery empowered to erect stake and other fixed nets for taking salmon in any estuary, &c.

XVIII. 'And whereas doubts exist with respect to the right to use stake weirs and stake nets, bag nets, and other fixed nets for the purpose of catching salmon in the sea and tide ways along the coast of *Ireland*, and it is necessary to define and declare such right;' be it therefore declared and enacted, that it shall and may be lawful for any person legally possessed of or entitled to any several fishery in or along any estuary or part of the sea coast in *Ireland* to fix or erect, or authorise and empower any lessee or assignee to fix or erect, within the limits and bounds of such fishery, but subject to the provisions of this Act, and such regulations and restrictions as may be made by the said commissioners pursuant to the powers herein-after reserved to them, any stake weir, stake net, bag net, or other fixed net for the taking of salmon: provided always, that the placing or erection of such stake nets, or other fixed nets as aforesaid shall not give or confer any right or title to the occupancy of the said shore (except for the purpose of attaching the said fixed nets thereto); saving to the Queen's most excellent Majesty, and all the subjects of this realm, the free and full exercise and enjoyment of all other rights of fishing, or other rights whatsoever, in or along the said sea shore or coast, or the shore of such estuary as aforesaid, subject to the provisions herein contained.

Proprietors and lessees of lands adjoining sea coast empowered to erect fixed nets where no several fishery exists.

XIX. And be it enacted, that it shall and may be lawful for every person who shall hold and occupy as tenant in fee simple or in fee tail, or as tenant for life, or as tenant under any lease for a life or lives, or as tenant for a term of years of which not less

than fourteen years shall be unexpired at the time of first erecting such net, any land adjoining the sea shore, or any estuary, not being within the limits of any such several fishery, but subject to the provisions of this Act, and to such regulations and restrictions as may be made by the said commissioners as aforesaid, to fix or erect such stake net or other fixed nets as aforesaid attached to that part of the shore adjoining such land: provided always that no **Proviso.** tenant under any lease for a life or lives determinable, or for years, of which less than one hundred shall be unexpired, shall be empowered to fix or erect such stake nets or other fixed nets as aforesaid without the previous consent in writing of the chief landlord or lessor seised of any rent and reversion in such land; and provided also, that the placing or erection of such stake nets or other fixed nets as aforesaid shall not give or confer any right or title to the occupancy of the said shore (except for the purpose of attaching the said fixed nets thereto during such occupancy of the land as aforesaid); saving to the Queen's most excellent Majesty, and all the subjects of this realm, the free and full exercise and enjoyment of all other rights of fishing, or other rights whatsoever, in or along the said sea shore or coast, or the shore of such estuary as aforesaid, subject to the provisions herein contained.

Saving of the right of the Crown and all other persons to the use of the shore.

XX. And be it enacted, that no drag, stake, bag, **Size of meshes of stake, bag, or other sea net.** or other net or engine for the taking of salmon, with meshes or openings of less size than two inches and a half between knot and knot or angle and angle, to be measured on each side of the square, or ten inches measured round each such mesh or opening in the clear when wet, allowing four knots or angles to each mesh or opening, nor any engine for the taking of salmon which shall be formed of wood, iron, or other rigid material, with meshes or openings of less width than three inches on each side of the square, and where no meshes or openings of the

nature of reticulations shall be used of less width between the bars than two inches, shall be used on any part of the coast of *Ireland*, or within any of the bays, estuaries, or tide ways thereof, save and except by the proprietor of the whole of the fishery of the river flowing into such bay, estuary, or tide way, from the mouth to the source thereof, including its tributary streams; and that if any person shall offend by using any such drag, stake, bag, or other net or engine, with meshes or openings of less width than aforesaid, he shall for such offence forfeit and pay any sum not exceeding ten pounds; and such drag, stake, bag, or other net or engine shall also be forfeited.

No stake or fixed net to be so placed as to be injurious or detrimental to navigation.

XXI. Provided always and be it enacted, that no stake weir, head weir, stake net, bag net, fixed net, or any contrivance for placing or erecting a net, shall in any case be placed or erected in such a manner as to be injurious or detrimental to navigation; and that in case any such stake weir, head weir, stake net, bag net, fixed net, or any contrivance for placing or erecting a net now is or at any time after the passing of this Act shall be so placed and erected as, in the judgment of the said commissioners, to be injurious and detrimental to navigation, it shall and may be lawful for the said commissioners, upon due inquiry, after summoning before them the owner or owners of such weirs or nets, to declare such weirs, nets, or contrivances as aforesaid a nuisance; and the said commissioners are hereby empowered, by warrant under their hands and seals, to authorise any person to abate and remove such weirs, nets, and contrivances as aforesaid at the expense of the person placing or erecting the same; and if any person shall again create the like nuisance, every such person shall for such offence forfeit and pay a sum not less than twenty pounds, or exceeding fifty pounds: provided always, that nothing herein contained shall be construed or taken to affect or

abridge the powers of her Majesty's high Court of Admiralty, or any other jurisdiction, in relation to the placing or erection of such weirs, fixed nets, or contrivances.

XXII. Provided always and be it enacted, that in such parts of any estuary or the mouth or tidal part of any river, where the breadth of the channel at low water of spring tides is less than three quarters of a mile statute measure, it shall not be lawful (any thing herein contained to the contrary notwithstanding) for any person, save and except the proprietor of a several fishery in the whole of such estuary and river to erect any such stake weir, stake net, bag net, fixed net, or contrivance for placing or erecting a net; and that where the breadth of the mouth or entrance into the sea of any river, the inland portion of which is frequented by salmon, is less than half a mile statute measure at low water of spring tides, it shall not be lawful for any person whatsoever (save and except the proprietor of a several fishery within the limits thereof) to place or erect any such weir or net within one statute mile seaward, coastwards, or inwards from or on either side of the mouth or entrance of any such river into the sea, the mouth or entrance of such river to be defined and determined for such purpose by the said commissioners; and if any person shall offend by erecting any such stake weir, stake bag, or other fixed net contrary to the provisions herein before contained, he shall for every such offence forfeit a sum not exceeding thirty pounds, and shall also forfeit such weir or net; and the stakes thereof shall be ordered, by the Justice imposing such penalty as aforesaid, to be pulled down or destroyed at the expense of the person so offending.

Stake and other fixed nets shall not be placed in the narrow parts of estuaries, nor in the mouths of rivers, or within one mile thereof, where breadth of same does not exceed half a mile.

XXIII. And be it enacted, that nothing herein contained shall be construed to render illegal any stake weirs and other contrivances for placing or erecting

Saving for stake weirs, &c. established twenty years.

nets which have been established for twenty years or upwards before the passing of this Act, in any estuary or portion of river within a tide way of less width than three fourths of a mile at low water of spring tides: provided always, that nothing herein contained in regard to the period during which such weirs shall have been established or otherwise, shall be construed to increase, lessen, or affect the title of any party claiming to maintain such weir, or any party disputing such title, but all parties shall be entitled to their respective rights as if this Act had not been passed, except so far as such rights may depend on any Act hereby repealed, and provided also, that such weirs and contrivances shall in all other respects be subject to and the persons using or owning the same bound by the provisions of this Act.

Stake weirs, &c.
erected for ten
years or upwards
within the limits
of a several
fishery not to be
deemed illegal.

XXIV. And be it enacted, that nothing herein contained shall be construed to render illegal any stake weirs, ebb and flood weirs, and other contrivances for placing or erecting nets which have been established for ten years or upwards before the passing of this Act within the limits of a several fishery, in any estuary, or portion of a river within a tide way of less width than three fourths of a mile at low water of spring tides, by any person legally possessed of or entitled to such several fishery by charter, grant, patent, prescription, or Act of Parliament, in and by which such limits are accurately defined: provided always, that such weirs and contrivances shall in all other respects be subject to and bound by the provisions of this Act.

Saving for head
weirs.

XXV. And be it enacted, that nothing in this Act contained with regard to the restriction upon the erection of weirs in rivers and estuaries less than three quarters of a mile broad at low water of spring tides, shall be construed to apply to that ancient description of weir commonly called head

weir, not fished by means of a fixed net, but the rights of every party now legally entitled by charter or prescriptive right to the erection and maintenance of such weir shall continue the same as if this Act had not passed: provided always, that such weir shall in all other respects be subject to and the persons using or owning the same bound by the provisions of this Act.

XXVI. And be it enacted, that no stake weir, stake net, nor any leader, outrigger, or other work of any kind or description whatsoever connected therewith or adjacent thereto, now erected or hereafter to be erected, shall be placed or erected or suffered to remain in such a manner as that the same shall extend to a greater distance than from high water to low water mark of spring tides, save and except in the case of ebb and flood weirs, commonly called head weirs, not fished by means of a fixed net; nor shall any such weir be so constructed as, in the judgment of the said commissioners, to be capable of taking young or unsizeable fish, or the fry of salmon or of any other fish; and the nets made use of in the formation and construction of the said stake weirs or stake nets, and of the leaders of all bag or other fixed nets, shall be extended evenly, in such a manner that the meshes of the said nets shall be stretched to their full opening; and that all bag nets shall be so placed and erected as that the netting of the leaders thereof can be raised and kept out of the water; and that stake weirs, stake nets, and other fixed nets shall be so placed and erected as that clear openings for the free passage of fish, as herein-after provided, can be made in the pouches and traps thereof; and if any person shall offend by erecting, forming or placing any weir, net, leader, engine, or work in any manner hereby prohibited, or neglected to construct the same in the mode required by the provisions herein-before contained, he shall for every such offence forfeit a sum not exceeding ten pounds.

Stake nets shall not extend further than from high to low water mark.

Further regulations as to stake, bag, and other fixed nets.

Nets for taking salmon not to be used at the mouths of narrow rivers, nor to be stretched across the mouths or any other parts of rivers.

XXVII. And be it enacted, that it shall not be lawful for any person save and except the proprietor of a several fishery within the limits thereof at any time to shoot, draw, or use any net for taking salmon at the mouth of any river opening into the sea (the inland or fresh water portion of which river is frequented by salmon), where the breadth of such mouth between the banks thereof shall not exceed a quarter of a mile statute measure; and that it shall not be lawful for any person, save such proprietor as aforesaid, within such limits as aforesaid, to shoot, draw, or use any net for taking salmon within half a mile seaward, or along the coast from the mouth of any such river, such mouth to be defined and ascertained, in case of dispute, by the said commissioners; and that it shall not be lawful for any person, save and except the proprietor of a several fishery in the whole of a river and its tributaries, within the limits of such several fishery, to shoot, draw, or stretch nets entirely across the mouth or across any other part of any river; and if any person shall offend by shooting, drawing, or using any net in any place or manner hereby prohibited, he shall for every such offence forfeit a sum not exceeding ten pounds.

Penalty on persons assaulting or obstructing any person fishing in a legal manner.

XXVIII. And be it enacted, that if any person shall resist or obstruct any persons lawfully engaged in fishing, or in proceeding to fish, or in returning from fishing as aforesaid, or shall wilfully and maliciously place any net or other engines, with the intent and design to prevent fish from entering the nets of other persons set or placed in a legal manner according to the provisions of this Act, every person so offending shall for every such offence forfeit and pay any sum not exceeding five pounds, and every such net or other engine so placed as aforesaid shall also be forfeited.

From 1st Jan. 1844, the close season for salmon

XXIX. And be it enacted, that from and after the first day of *January* in the year one thousand

eight hundred and forty-four no fish of the salmon kind shall be taken in or from any river, lake, or estuary whatsoever, or on the sea coast, between the twentieth day of *August* in any year and the twelfth day of *February* in the year following, by any person, save and except in any river, lake, or estuary, or on any of the sea coast, where the catching of salmon shall be permitted during such period by the said commissioners in conformity with the powers herein-after vested in them for that purpose.

to be from 20th
of August to 12th
of February.

XXX. And be it enacted, that no person shall kill, take, or destroy, in any lakes or rivers, any trout, between the first day of *October* in any year and the twelfth day of *February* in the year following; nor shall any fixed crib, cruive, box, or other device, nor any draw, haul, or other net of any description, for the catching of such trout, be used, in any lake or river frequented by salmon, between the twentieth day of *August* aforesaid and the first day of *October* in any year, or at such periods between the terminations respectively of the open seasons for catching salmon and trout as may be fixed for certain lakes and rivers by the said commissioners as herein-after mentioned.

Close season for
trout, 1st of Octo-
ber to 12th of
February.

XXXI. And be it enacted, that it shall not be lawful for any person whatsoever, between the tenth day of *January* and the first day of *July* in any year, to hang or fix any coghill, eel, or other net or basket, or basket work, in the eye, gap, or sluice of any eel or other weir in any river, or to make use of any other fixed engine for taking eels, or between the first day of *July* in any year and the tenth day of *January* in the year following to keep or leave such net, basket, or other engine set, or in the water, in the eye, gaps, or sluices of such eel or other weirs, between sunrise and sunset.

Fixed nets or
engines for the
taking of eels
shall not be set
in inland rivers
between 10th of
January and 1st
of July.

XXXII. And be it enacted, that it shall not be lawful for any person between the first day of *May*

Close season for
oysters, 1st of

May to 1st of
September.

and the first day of *September* in any year to dredge for, take, catch, or destroy any oyster or oyster brood, save and except where the season for taking the same shall be changed by the commissioners according to the provisions herein-after contained.

Commissioners
empowered to
alter the close
season in any
river or district,
upon inquiry had,
and proof that
such alteration is
expedient.

XXXIII. "And whereas it may be found that the periods herein-before fixed within which it shall not be lawful to take salmon and trout, or to take eels by means of eel weirs, coghill nets, baskets, or other fixed engines or cruives, and the period herein-before fixed within which it shall not be lawful to dredge for oysters, may require to be changed as respects the fisheries in particular localities;" be it therefore enacted, that it shall and may be lawful for the said commissioners, if they shall so think fit, upon the application of any person possessed of or interested in any such fishery as aforesaid, to call a meeting of the persons possessed of or interested in such fisheries, giving notice of the day and place appointed for such meeting, by printed handbills, and advertisement to be inserted once in each month, for three months prior thereto, in some newspaper or newspapers published and circulating in the county or several counties within which, or on the coast whereof, such fisheries are in whole or in part situated; and it shall be lawful for the said commissioners to issue summonses for witnesses to attend and give evidence with respect to the said fisheries; and the said commissioners shall hear and receive all such pertinent evidence as shall be offered to them on the subject of the said fisheries, and shall examine and inquire into the same, upon oath or otherwise, and by all such means as may be deemed expedient by them, and may, if they shall so think fit, decide that the period herein-before appointed for the close time of such fisheries respectively shall cease, and that such other period as shall then be fixed upon by them as the close time for any of such fisheries shall be kept and observed in

lieu thereof, or alter, if so required as aforesaid, the period within which it shall not be lawful to hang any coghill or other nets in the gaps, eyes, or sluices of eel or other weirs, or make use of fixed engines for taking eels: Provided always, that such close season or period during which it shall not be lawful to take salmon shall not comprise fewer than one hundred and twenty-four days in each year, and also that the expences of the application, and all proceedings consequent thereon, shall be defrayed by the person or persons who shall have signed such application; and provided also, that the close season for salmon in all rivers in *Ireland* shall, as hereinbefore provided, remain, as at present, until the first of *January* one thousand eight hundred and forty-four.

XXXIV. And be it enacted, that the decision as to the close time of any district, or of any lake or river, or as to the periods within which it shall be lawful to take eels by means of eel weirs, coghill nets, baskets, or other fixed engines, shall be published in the *Dublin Gazette*, and in some one newspaper circulating in the county or each of the counties within which such district is in whole or in part situated, or such lake or river is situate, or in whole or in part flows, and a copy thereof lodged in the office or offices of the clerk or clerks of the peace, and clerks of petty sessions, for such county or counties aforesaid; and the said commissioners shall give to said decision such further publicity, either by the posting of handbills or otherwise, as to them shall seem fit; and for the purpose of convicting any person or persons offending against such decision a copy of the gazette containing such decision, or an attested copy of such decision, obtained from the office of the clerk of the peace with whom the same may be lodged, and who is hereby required to furnish the same on payment of a sum not exceeding two pence for every seventy-two words, shall be

Decision of commissioners as to close season shall be published.

conclusive evidence of the existence of such decision and the due publication thereof: Provided always, that in case the said commissioners shall decide upon altering the close season herein fixed for such fisheries as aforesaid, such change or alteration shall not commence and take effect until the expiration of three months from the date of the said decision.

Close season thus determined to continue for three years, and until like proceedings for alteration shall be again had.

XXXV. And be it enacted, that the close time so fixed shall be the close time of the district or of the lake or river in respect of which such decision shall have been made, instead of the time mentioned in this Act, and shall be observed and kept as if the time so determined by the said commissioners had been mentioned in this Act, and shall thereafter continue so to be until changed by the said commissioners; and that at any time after the expiration of three years from the commencement thereof, or at any time after the expiration of a like period of three years from the commencement of any subsequent change to be made in pursuance of the provisions of this Act, it shall and may be lawful for the said commissioners, upon the like application, and if upon like inquiry they shall so think fit, again to change the same; and the same proceedings towards the so doing as are herein-before prescribed in relation to the first change shall take place on each such future change, and the same provisions shall apply thereto.

Penalty for any person catching, taking, having in his possession, or offering for sale, salmon or trout caught in close seasons.

XXXVI. And be it enacted, that if, during the close season for salmon now fixed by any Act in force in *Ireland*, or which after the first day of *January* one thousand eight hundred and forty-four will become fixed by this Act, or shall be from time to time fixed by the said commissioners as aforesaid, as the close time for or in respect of any river, lake, estuary, or any part of the sea coast, any person shall wilfully take or fish for, or aid or assist in tak-

ing or fishing for, any salmon or trout therein or therefrom, such person shall forfeit and pay any sum not exceeding ten pounds for every such offence, and shall also forfeit every fish so taken, and every net or engine by which the same may have been taken; and if any person shall buy, sell, or expose to sale, or have in his custody or possession, any salmon or trout so caught in such close time as aforesaid, such person shall forfeit each and every such fish, and a sum not exceeding two pounds for each such fish; and in any proceeding for the recovery of the said last-mentioned penalty proof that such person had the salmon or trout in his custody or possession during such close season shall be *prima facie* evidence that the said salmon or trout was caught during the close season as aforesaid; and if any person shall place or hang any coghill or eel nets or baskets, or other fixed modes of catching fish, in the eyes, gaps, or sluices of eel or other weirs, within the periods prohibited by this Act, or to be prohibited by the said commissioners in pursuance of this Act, such person shall forfeit such nets, and shall pay or forfeit a sum not exceeding ten pounds for each such net; and if any person shall hang or set, or leave hung or set, such nets as last aforesaid, between sunrise and sunset, within the periods allowed for the said fishery, such person so offending shall forfeit the said nets, and shall pay or forfeit a sum not exceeding five pounds for each such net; and in any proceedings against any person for the recovery of any penalty incurred by violation of the provisions aforesaid, proof that such person is the occupier of such weir shall be *prima facie* evidence that the said nets were hung or set, or left hung or set, by him; and if any person shall dredge for, take, catch, or destroy, have in his possession, sell, or buy, any oysters or oyster brood within the period prohibited by this Act, or within the period to be prohibited by the said commissioners in pursuance of this Act, such person shall

forfeit such oysters, and forfeit and pay a sum not exceeding five pounds for each offence; provided that nothing herein contained shall be construed to prevent the proprietor of any oyster bed, or any person deriving under him, from removing or laying down oyster brood during such close season.

All machinery, nets, and tackling for the taking of salmon, &c. in salmon weirs, or other fixed engines, shall be wholly removed during close seasons.

XXXVII. And be it enacted, that during the close season for salmon so fixed by any Act now in force in *Ireland*, or which shall after the first day of *January* one thousand eight hundred and forty-four become fixed under this Act, or which shall be fixed as aforesaid by the said commissioners, every occupier or farmer of any fishery shall remove and carry away or cause to be removed and carried away, from such fishery, and the weirs, dikes, and dams connected therewith, and from the river or stream in which such weirs, dikes, or dams are placed, and from the landing places adjoining thereto, all and every engine, spear, hand net, or other net, inscale, hecks, and rails of all cruives, boxes, or cribs, used for the purpose of taking or killing salmon, and the tops of such cruives, boxes, or cribs, and all planks and temporary engines and fixtures used and required for the fishing of the same; and that all and every obstruction to the free passage of the fish in and through each and every such cruiue, crib, or box be wholly removed and carried away within thirty-six hours after the expiration of the open season so fixed as aforesaid, and shall not be again placed or allowed to be placed or to remain therein until within thirty-six hours of the commencement of such open season; and in case any such occupier or farmer shall omit or neglect so to remove all and every such net, engine, or other tackle, contrivance, or obstruction as aforesaid, and to keep the same apart from the said fisheries during the time aforesaid, or shall neglect to maintain and keep such cribs, boxes, or cruives free from all obstructions to the passage of fish during the time aforesaid, he

Penalty for neglect.

shall forfeit all such nets, engines, or other tackle or contrivance as aforesaid, and shall for every such offence forfeit and pay a sum not exceeding fifty pounds, and shall also, for every day during which he shall suffer such obstacles and other things to remain and be unremoved beyond the period prescribed by this Act, forfeit and pay a sum not exceeding five pounds; and it shall be lawful to and for the justice of the peace before whom the person so offending shall be convicted to order the removal and sale of such nets, engines, or other tackle at the expence of the person so offending: *Provided* always, that nothing herein contained shall be construed to render liable to any penalty any person who shall be prevented by floods, storm, or stress of weather from removing any such net, engine, or tackle during the continuance of such prevention; and provided also, that the proprietor or farmer of any salmon weir, now legally entitled by patent, charter, or otherwise, to a right of fishing for eels in such weir, and who has exercised such right previous to the passing of this Act, shall not be liable to any penalty on account of his placing, hanging, or using, coghills or eel nets or baskets in the eyes or gaps of such weir, if such coghills or eel nets or baskets be only used in conformity with the provisions of this Act, and be only hung in four fifths in number of the eyes or gaps of such weir, and the other one fifth of such eyes or gaps, in addition to the Queen's or free pass, be kept open and unobstructed for the free passage of all kinds of fish, as herein provided; and provided also, that nothing herein contained shall be construed to exempt such proprietor or farmer from liability to the penalties by this Act directed in case any salmon or trout shall be killed, taken, or caught in such weir during close season, or in case he shall not keep open and unobstructed, according to the provisions of this Act, one fifth in number, as aforesaid, of the eyes or gaps of the said weir.

All bag, sole, fly, or stake nets and other engines for catching salmon in tide way shall be removed during close season.

XXXVIII. And be it enacted, that during the close season for salmon so fixed under any Act now in force, or which shall after the said first day of *January* one thousand eight hundred and forty-four become fixed by this Act, or which shall be fixed by the said commissioners as aforesaid, every proprietor, lessee, or other person who shall be engaged in fishing for salmon by means of fixed engines, shall remove and carry away, or cause to be removed and carried away, from the poles or fixtures to which they shall be attached, all stake nets, bag nets, sole nets, fly nets, or other devices or engines used for the purpose of taking salmon, except where such nets, devices, or engines shall be formed of wood, iron, copper, or other rigid substance, in which case a clear opening of four feet in width shall be made and maintained in and completely through the pouches, traps, or chambers, of all such nets, devices, or engines, from the top to the bottom of such pouches, traps, or chambers, and in the eyes of flood and ebb weirs, commonly called head weirs, so as to allow the free passage of salmon and other fish through the same, and effectually to prevent the catching or taking of any fish therein; and in case any such person shall omit or neglect to remove or carry away all such nets and engines, or, as the case may be, to make and maintain free from all obstruction such openings as aforesaid, during the times aforesaid, he shall forfeit all such nets or engines, and shall forfeit and pay a sum not exceeding fifty pounds, and shall also for every day during which such nets or engines shall remain and be unremoved beyond the period prescribed by this Act, forfeit and pay a sum not exceeding five pounds: Provided always, that nothing herein contained shall be construed to render liable to any penalty any person who shall be prevented by storm or stress of weather from removing such nets or engines, or making such openings as aforesaid, during the continuance of such prevention.

Penalty.

XXXIX. 'And whereas soles, turbot, sprats, hake and other white sea fish are now caught by means of weirs in the tide ways of certain rivers during the close salmon season, and it is expedient that such fisheries should, under certain restrictions, be permitted ;' be it enacted, that it shall be lawful for all persons now legally entitled by charter or prescriptive right to the use of such weirs to continue to use them for the purpose of catching white fish, notwithstanding its being the close salmon season, provided they obtain the licence of the commissioners appointed under this Act to do so ; and it shall be lawful to the said commissioners to issue their licence accordingly for such period as they may think proper ; provided, however, that all such weirs shall be subject in all other respects to the provisions of this Act, and to such bye laws and regulations as may be made in regard to them by the said commissioners pursuant to the powers reserved to them in this Act.

Saving for weirs to catch white sea fish.

XL. And be it enacted, that it shall not be lawful, in inland lakes or rivers, to take, kill, or fish for any salmon or trout in or by any crib, box, cruive, eye, sluice, or gap in any eel or other weir or dam, or by any nets of what nature or kind soever, between six of the clock on *Saturday* evening and six of the clock on *Monday* morning ; and that it shall not be lawful, in the sea or any estuaries or tide ways, to take, kill, or fish for any salmon or trout in or by any stake, flood, ebb, or head weir, stake net, bag net, fixed net, or other net whatsoever, between the low water next in point of time before six of the clock on *Saturday* night and the low water next in point of time before six of the clock on *Monday* morning, but that in each of such stake, flood, ebb, or head weir, and stake net, a clear opening of at least four feet in width shall be made, and kept free from obstruction, in the pouches, traps, chambers, or eyes of the same, from the bottom to the top thereof, so as effectually to allow of the free passage

Salmon or trout not to be taken in any traps, nets, or fixed engines from six o'clock on *Saturday* evening to six o'clock on *Monday* morning.

Leaders of bag
nets, &c. to be
removed during
that time.

of salmon and other fish through such pouches, traps, chambers, and eyes during such weekly close time; and that the netting of the leader of each and every such bag, fly, sole, or other fixed net of similar construction, shall during such time be raised and kept out of the water; and also that in all rivers, lakes, and tide ways all other nets and baskets whatsoever, except those used for the taking of eels, shall be wholly removed and taken out of the water for and during the space of time above mentioned; and the inscales or gates and rails or framework of all such cribs, boxes, or cruives for the catching of salmon, or other fish of the salmon kind, shall be removed out of or opened in each such crib, box, or cruive, eye, sluice, or gap, in every salmon or other weir wherein salmon may be caught, in such a manner

A free passage of
four feet wide to
be left during that
time through each
crib or trap for
taking salmon &c.

that a clear opening of not less than four feet in width from the bottom to the top of each such crib, box, or cruive shall be left therein, and that a free, direct, and uninterrupted space or opening of the said width shall be effectually secured for the passage of fish of all kinds, both up and down, through such boxes, cribs, or cruives; and any person occupying or using any such box, crib, cruive, stake, flood, ebb, or head weir, stake, bag, or other fixed net, basket, or other engines for catching fish, and failing to remove or open the same as required by this Act, and any person using any means, device, or contrivance to prevent the free passage through such box, crib, cruive, or engine, or in any way or by any means wilfully frightening or scaring, or attempting to frighten or scare, any salmon or other fish from passing through such box, crib, cruive, pouch, trap, eye, sluice, gap, or other engine, or taking therein any salmon between six of the clock on *Saturday* evening and six of the clock on *Monday* morning, or between the low waters next in point of time to those periods respectively, as the case may be, shall for every such offence forfeit and pay a sum not less than five pounds and not exceeding fifty pounds:

Penalty.

provided always, that nothing herein contained shall be construed to render liable to any penalty any person who shall be prevented by floods, storm, or stress of weather from removing such leaders, or making such openings as aforesaid, during the continuance of such prevention.

XLI. And be it enacted, that from and after the first day of *January* one thousand eight hundred and forty-three, in all standing weirs, dams, or dykes, of what nature or kind soever, which extend more than halfway across any river at the lowest state of the water thereof, or more than halfway across any branch thereof, for the purpose of catching salmon, eels, or other fish, a free gap or Queen's share shall be left or formed in the deepest part of such river or any such branch as aforesaid, and shall be constructed in such manner that the sides of the said free gap or Queen's share shall be in the line of and parallel to the natural direction of the stream of such river or branch as aforesaid, and that the bottom thereof shall be level with the natural bed of such river or branch as aforesaid above and below such gap or Queen's share, and that the width thereof, at its narrowest point, shall be not less than forty feet in the clear in all such rivers or branches as aforesaid of and exceeding four hundred feet in breadth, and not less in the clear than one-tenth part of the breadth of such river or branch thereof in all such rivers or branches as aforesaid of less than four hundred feet and not less than one hundred feet in breadth, and not less than ten feet in the clear in all such rivers or branches as aforesaid of less than one hundred feet and not less than fifty feet in breadth, and not less than five feet in the clear in all such rivers and branches as aforesaid of less breadth than fifty feet, the breadth of such rivers or branches as aforesaid in all cases to be ascertained by measuring the breadth of the natural bed thereof at the place where such weir, dam, or dyke shall be erected,

In all salmon and other weirs for the taking of salmon or other fish a free gap or Queen's share to be left.

without reference to any walls, artificial banks, or erections; and in cases of dispute relative to any of the matters aforesaid the same shall be determined by the said commissioners; and that in all weirs, dams, or dykes in which a free gap or Queen's share at present exists, such free gap or Queen's share shall not be reduced in width, nor shall any free gap or Queen's share of less width be substituted in lieu thereof, any thing herein contained to the contrary notwithstanding; and if any person entitled to or possessed of the fishing of such river or branch thereof, or any weir, dam, or dyke, shall omit or neglect to leave or form such free gap or Queen's share of the dimensions, or in the place, or to construct it in the manner herein-before required, or shall reduce the width of any existing free gap or Queen's share, or substitute a free gap or Queen's share of less width in lieu thereof, such person so offending shall forfeit and pay a sum not exceeding fifty pounds, and shall also for every day during which such free gap or Queen's share shall not be left or formed of the dimensions, or in the place, or shall not be constructed in the manner herein-before required, or shall be reduced in width, or shall remain of less width than that in lieu of which it is substituted, forfeit and pay a sum not exceeding five pounds: Provided always, that the person entitled to or lawfully possessed of any weir, dam, or dyke, in which by law no such free gap or Queen's share could previous to the passing of this Act be enforced to be made or widened, shall not be liable to any penalty by reason of his not widening or making, as the case may be, such free gap or Queen's share, until his claim (if any) for compensation for the loss or damage he may sustain by widening or making such free gap or Queen's share be settled and disposed of, and the amount of compensation (if any) paid, tendered, or lodged, according to the provisions herein-after contained.

XLII. And be it enacted, that in all cases of weirs, dams, and dykes in which no free gap or Queen's share could by law previous to the passing of this Act be enforced to be made, or in which the free gap or Queen's share shall not be of the width herein-before specified, and could not by law previous to the passing of this Act be widened, it shall be lawful for the said commissioners, upon the application of any proprietor of fisheries in or lands adjoining to the river in which any such weir, dam, or dyke shall be situate, and who shall deposit or secure, to the satisfaction of the said commissioners, the amount of the cost of all proceedings necessary to be taken under the provisions herein contained, to serve a notice on the proprietor, lessee, or occupier of such weir, or at his or their known place of abode, and thereby to require the proprietor of such weir, dam, or dyke to enlarge or open a free gap or Queen's share therein of such dimensions as the said commissioners shall deem fit and shall name in such notice, not exceeding the dimensions herein-before specified, and to furnish his claim for compensation, or his objections, if any, to making or widening such free gap or Queen's share within a time to be specified in such notice, not less than thirty days from the service thereof on the proprietor, lessee, or occupier of such weir.

Commissioners may require owners of weirs in certain cases to make gaps therein, and furnish a claim for compensation

XLIII. And be it enacted, that every proprietor or other owner of any such weir, dam, or dyke, or of any share, estate, or interest therein, may accept and receive as satisfaction and recompence for the value of any injury or damage that shall be sustained on account of opening or enlarging such free gap or Queen's share, or in anywise relating thereto, such sum of money in respect thereof as shall be agreed upon between him respectively and the said commissioners; and in case the said commissioners and the said party interested in such weir, dam, or dyke, or sustaining such injury or damage, cannot or do

Satisfaction may be made, and accepted.

not agree as to the amount or value of such satisfaction, recompence, or compensation, the same respectively shall be ascertained and settled in manner herein-after directed.

Commissioners
empowered to
assess the value
in case of dispute.

XLIV. And be it enacted, that if any such proprietor of such weir, dam, or dyke as aforesaid shall neglect or refuse to treat, or shall not agree with the said commissioners, or, by reason of absence or disability, cannot agree, or cannot be found or known, or shall not prove to the satisfaction of the said commissioners a clear title to receive such recompence or compensation as aforesaid, or in case any such proprietor of a weir, dam, or dyke wherein such gap is to be opened or enlarged as aforesaid shall not accept such satisfaction or recompence for the same as shall be offered by the said commissioners, for the space of thirty days after notice in writing given to the known agent or attorney of such proprietor as aforesaid, or left at his place of abode, or at the house of the lessee of such weir, wherein such gap is intended to be opened or enlarged as aforesaid, or in case the proprietors of fisheries in or proprietors or owners of lands adjoining the river in which such weir, dam, or dyke shall be situate shall not agree with the proprietor of such weir, dam, or dyke, or shall not subscribe and deposit the amount which the said commissioners may agree upon with the said proprietor of such weir, dam, or dyke as the amount of compensation to be paid for enlarging or opening such free gap, or Queen's share, or shall not agree upon the proportions in which such amount of compensation is to be paid by the several proprietors respectively, then in every such case the said commissioners are hereby empowered, at a time and place to be specified in a notice to be served as aforesaid, and published once in the *Dublin Gazette*, and once in each week for three successive weeks in a newspaper circulating in the county or counties in which such

weir, dam, or dyke shall be situate, and through or by which such river shall flow, to inquire and examine, and assess and award the sum of money to be paid for such satisfaction or recompence as aforesaid, and ascertain and settle in what proportions the proprietors of fisheries in such river, or in any river or stream tributary thereto, or proprietors or owners of lands adjoining the same, should contribute to pay the sum so awarded, and the said commissioners shall award such recompence so to be assessed; and the said commissioners shall in such award name or describe the persons (if known to the said commissioners) to whom respectively the sum mentioned therein shall be paid, and in what proportions the same shall be paid to and among such persons, where more than one, and the weir, naming or describing the same, in respect of which such sum has been so awarded, and the position and breadth of such free gap or Queen's share, and the names or other description of the fisheries or lands, as the case may be, the proprietors or owners of which are to contribute the amount awarded for such satisfaction or recompence as aforesaid, and the proportion to be contributed by each respectively; and the said commissioners shall notify and appoint a time and place for holding a meeting for the confirmation of their said award, and shall attend at such time and place, and at such meeting, or at some adjournment thereof, proceed to consider each case, and hear all objections which may be made thereto by any person whatsoever, and receive all such evidence as they shall find pertinent and proper, and amend or confirm and settle each, such award accordingly; and such award shall be conclusive and binding upon the Queen's most excellent Majesty, and all other persons interested, except in the case and subject to the provisions hereinafter contained: Provided always, that the person who shall under the provision before mentioned be deemed a proprietor of lands, shall be the propri-

etor in fee simple or fee tail, or for a lease of lives renewable for ever, or for life, with remainder to his issue, or for ever, or for a term of which not less than one hundred years are unexpired, and from whom the fishery or right of fishing shall not have been reserved.

Any person dissatisfied with the adjudication of the commissioners may appeal to the judge at the Assizes.

XLV. And be it enacted, that if the proprietor or other person claiming compensation on account of such enlarging or opening of the free gap or Queen's share in such weir, dam, or dyke, or any person liable to pay such compensation as aforesaid, shall be dissatisfied with the award of the said commissioners, it shall be lawful for the person so dissatisfied to appeal to the Judges of assize or one of them, at the assizes which shall be held next after any such award shall have been made and settled as aforesaid for the county wherein such weir, dam, or dyke, shall be wholly or in part situate, (provided the same shall not be held sooner than thirty-one days after the making of such award), the party appealing, if there be sufficient time after the making of such award, having first given to the said commissioners twenty-one days notice at least of his intention of bringing such appeal, and of the matter thereof; and if there shall not be thirty-one days between the making of such award and the day appointed for holding such assizes, then such appeal may be tried at the assizes which shall be holden for such county next after the expiration of thirty-one days from the making such award, and the like notice thereof shall be given; and any judge at such assizes, or any adjournment thereof, upon due proof of such notice having been given, is hereby empowered and required to hear and finally determine the matter of such appeal, in such and the same manner as he is at present empowered to do in cases of appeal from decrees on civil bills made by assistant barristers at quarter sessions in *Ireland*: provided always, that if such dam, weir, or dyke shall be situate in more than one county or between

two or more counties, such appeal shall be tried at the assizes to be held in the county the assize town of which shall be nearest to such weir, dam, or dyke; and provided also, that if no notice of appeal shall be served on the said commissioners within twenty-one days next after their award shall be made, the same shall be final, binding, and conclusive upon all persons and to all intents and purposes whatsoever.

XLVI. And be it enacted, that in all cases of appeal as aforesaid the said judges of assize or one of them shall give judgment in respect to the matter of such appeal, and such judgment shall be final, binding, and conclusive to all intents and purposes against all parties, corporations, and persons. Judgments to be final.

XLVII. And be it enacted, that such of the aforesaid awards of the said commissioners as shall not be appealed from, and the judgments so given as aforesaid, shall be respectively transmitted to and be kept by the respective clerks of the peace of the counties of which the land in respect of which such awards or judgments shall have been respectively made shall be situate, and shall be deposited with the records, and deemed records of such counties respectively to all intents and purposes; and the same, or certified copies thereof, shall be allowed to be good evidence in all courts whatsoever; and all persons shall have liberty to inspect the same, paying for such inspection the sum of sixpence, or to have copies thereof, paying for every copy the sum of three halfpence for every seventy-two words, and so in proportion for any greater or less number of words. Awards and judgments to be recorded.

XLVIII. And be it enacted, that if the persons who, under any award or judgment made as aforesaid, shall be liable to pay two thirds in amount of the sum so awarded, assessed, or ascertained, shall, at any time subsequent to the depositing of such If two-thirds of parties liable to pay the compensation assent, award or judgment shall be binding on remainder.

award or judgment with the clerk of the peace as aforesaid, signify to the said commissioners their assent in writing to such award or judgment, then and in such case the said commissioners shall cause a final notice to be served on the proprietor, lessee, or occupier of such weir, dam, or dyke, and a copy thereof to be published once in the *Dublin Gazette*, and once in each week for three successive weeks in some one or more newspapers circulating in the county or counties in which such weir, dam, or dyke, shall be situate, stating that such assent had been duly given, and that all the requisites of this Act in respect to the making such award or judgment had been fully complied with, and calling upon all parties liable under such award or judgment to pay to the said commissioners, within a time to be specified in such notice, not less than three months from the date thereof, the sums of money which such parties thereby became liable to pay; and the publication of such notice shall be deemed final and conclusive evidence that such assent had been given, and that the several preliminary measures herein-before required to be taken and observed in respect to such award or judgment had been duly taken and observed; and from and after the publication of such notice all the proprietors for the time being of the fisheries or lands named in such award or judgment shall be liable and bound to contribute the sum awarded, assessed, or ascertained, in the proportions fixed by such award or judgment.

If not paid, it
may be sued for.

XLIX. And be it enacted, that if any portion of the money so to be contributed shall remain unpaid to the said commissioners after the expiration of the period fixed by such notice as last aforesaid, then it shall be lawful for the said commissioners to recover the same from the proprietors of the fisheries or lands named or described in the said award or judgment, who shall make default in the payment

thereof, by civil bill, or by action or suit in any of the superior courts in *Dublin*,

L. And be it enacted, that upon receipt of the money so agreed, awarded, or adjudged to be paid as satisfaction or recompense for enlarging or opening such free gap or Queen's share in such weir, dam, or dyke, under the provisions herein-before contained, the said commissioners shall forthwith pay over the same to the parties entitled to receive the same by virtue of such agreement, award, or judgment, subject to the provisions herein-after contained.

Compensation to be paid over, when received, to parties entitled.

LI. And be it enacted, that if any money shall be adjudged or awarded to be paid for any free gap or Queen's share so enlarged or opened as aforesaid by virtue of the powers of this Act, in any weir, dam, or dyke which shall belong to any corporation, or to any trustee or feoffee, executor or administrator, or any husband, guardian, or committee for or on behalf of any feme covert, infant, idiot, or lunatic, or to a tenant for life, or any person who shall have no power to give a valid receipt for the same, such money shall, in case the same shall amount to or exceed the sum of two hundred pounds, with all convenient speed be paid into the bank of *Ireland* in the name and with the privity of the Accountant General of the Court of Chancery or Exchequer, to be placed to his account there *ex parte* the commissioners for executing this Act, setting forth the title hereof, and without fee or reward, and shall, when so paid in, there remain until the same shall, by order of the said court, made upon a petition to be preferred to the said court in a summary way by the person who would have been entitled to the said compensation as aforesaid, be invested by the said Accountant General, in his name, in the purchase of any stocks, funds, or annuities transferable at the bank of *Ireland*; and the dividends or annual produce thereof shall from time to time be paid to

Application of compensation money when amounting to or exceeding £200.

the person who would for the time being have been entitled to the said compensation as aforesaid.

When less than
£200, and
amounting to or
exceeding £20.

LII. Provided always, and be it enacted, that if any money so adjudged or awarded to be paid for any land, such compensation as aforesaid belonging to any corporation or to any person as last aforesaid shall be less than the sum of two hundred pounds, and shall amount to or exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person for the time being entitled to the compensation aforesaid, or of his guardian or committee, in case of infancy, lunacy, or other incapacity, to be signified in writing under their common seal or respective hands (as the case may require), be paid into the bank of *Ireland* in the name and with the privity of the said Accountant General, and be placed to his account as aforesaid; in order to be applied in the manner herein-before directed; or otherwise the same may be paid, at the like option, and with the like approbation, to two or more trustees, to be nominated by the person who for the time being would be entitled to the compensation as aforesaid, such nomination to be approved of by the said commissioners, and such nomination and approbation to be signified in writing under the hands or common seal of the nominating and approving parties; and the monies so paid to such trustees, and the dividends and produce arising thereon, may be applied by such trustees in like manner as is herein-before directed with respect to the money so to be invested in the bank of *Ireland*; without being required to obtain any order of the Court of Chancery or Exchequer touching the application thereof.

When less than
£20.

LIII. Provided also, and be it enacted, that if any money so adjudged or awarded to be paid as herein-before mentioned shall be less than twenty pounds, then and in every such case the same shall be paid

to the person who would for the time being have been entitled to the compensation aforesaid, for his own use and benefit, or in case of infancy or lunacy or other incapacity, then to the person acting as guardian, committee, or trustee of such person, to and for the use and benefit of the person entitled thereto.

LIV. And be it enacted, that it shall not be lawful to construct or attach to, or permit to remain if already constructed or attached to, any cruiwe weir or cruiwe dam used for fishing in any river any spur or tail wall, leader or outrigger, of any kind or description whatsoever, of a greater length than twenty feet from the upper or lower side respectively of the walls or piers of such weir or dam, except the wall or leader connecting the cribs of such weir or dam with the bank of the river; nor shall any such wall or walls, leader or outrigger be so built or constructed as to narrow up or prevent the ingress and discharge of the water through or from the free opening or Queen's share in such river or stream; nor shall any island or natural formation in any river be so made use of as to secure the proprietor of any fishery the same advantage which such proprietor would have obtained by the erection of a tail wall of greater length than twenty feet; nor shall any such walls or leaders be constructed or suffered to remain in narrow rivers or other places of a greater length than the said commissioners, upon application made to them for that purpose, shall determine and approve, any thing in this Act contained to the contrary thereof in anywise notwithstanding; and if any person having a fishing weir or dam shall construct, or suffer to remain if already constructed, any spur or tail wall, leader or outrigger of greater length than aforesaid, or of greater length than the said commissioners shall approve, shall offend contrary hereto, such person so offending shall forfeit and pay a sum not exceeding twenty Penalty.

Spur and tail walls of such Queen's share not to be more than twenty feet long above or below the walls of fishing weirs.

pounds, and shall also for every day during which such spur or tail walls, leader or outrigger, so constructed in contravention of the provision of this Act, shall be allowed to remain, forfeit a sum of five pounds.

Not to extend to weirs, banks, or heads used for sustaining mills and navigation.

LV. Provided always and be it enacted, that nothing herein-before contained respecting the making or maintaining such free gap or Queen's share, or the length of such spur or tail walls, or such island or natural formation, shall be construed to extend to weirs, banks, or heads used for sustaining a supply of water to mills, factories, or navigation, so as injuriously to affect the necessary supply of water thereto, if such weirs, banks, or heads shall not be made use of for the purpose of taking salmon or other fish in any manner whatsoever.

Saving for mill weirs legally used for fishing.

LVI. Provided always, and be it enacted that if any weir, dam, or bank used for sustaining a supply of water to mills, factories, or navigation shall be, by virtue of Act of Parliament, charter, or prescription, legally used for the catching of salmon or other fish, nothing herein-before contained respecting the making or maintaining a free gap or Queen's share, or the length of such spur or tail walls, shall be construed to extend to such weir, dam, or bank, so as injuriously to affect the necessary supply of water to such mill, factory or navigation.

No obstructions shall be placed in, over, or near the Queen's share, nor shall any person fish in or near the same.

LVII. And be it enacted, that no person or persons shall fish with rod and line or in any other manner in any part of such free gap or Queen's share in any weir in any river, or hang, fix, set, or use, within the space of fifty yards above or below any part of such weir, any net, basket, or other engine whatsoever for the taking of fish, or in order to deter or prevent fish from going up or down the same, or place any obstruction, or throw any gravel, clay, stones, or other matter into the same, nor shall beat the water,

or place or set any bridge, board, cloth, or any other thing whatsoever in, over, or across the same (save and except a temporary bridge or board during the time only when the persons engaged in the fishing of the said weir shall be passing over the same), nor shall in any manner prevent the free and uninterrupted passage of fish through the same at all periods of the year; and every person offending herein shall for every such offence forfeit and pay a sum not exceeding thirty pounds; and all such obstructions shall be forthwith removed at the expense of such person upon the order of the justice imposing such penalty as aforesaid; and in any proceeding against any person for the recovery of any penalties incurred by the violation of the provisions aforesaid, proof that such person is the occupier or owner of such weir shall be taken as *prima facie* evidence that such obstructions were placed by him.

LVIII. And be it enacted, that every box, crib, or cruive used for the taking of salmon shall be so constructed that the upper surface of the sole or bottom thereof shall be level with the natural bed or channel of the river; and the inscales of every box, crib, or cruive shall be so constructed that no part of the bars thereof shall approach nearer to each other than two inches, and that the same shall be capable of being removed, and during the weekly close period such inscales shall be opened to the full width of four feet, and during other close periods such inscales shall be wholly taken out, so that the space within the box shall present no obstruction or obstacle whatever to salmon passing through such box, crib, or cruive; and the bars or rails of such inscales, and of the heck or the up-stream side of the box or crib, shall be so constructed that no part of the rails shall approach nearer to each other than two inches; and such up-stream rails shall be placed perpendicularly, and during the weekly close time be either entirely removed or taken out, or so opened

Regulations as to
cribs, cruives, or
boxes in fixed
weirs, for the
taking of salmon,
&c.

and fastened back, that a space of four feet shall be completely free and clear in each such box, crib, or cruive; and the said commissioners are hereby authorized from time to time to make such orders or regulations with respect to the formation or structure of such boxes or cribs, or other fixed engines for catching salmon, as shall be deemed expedient and necessary to suit any improved methods proposed to be adopted; and any person using or constructing any such box, crib, or cruive contrary to the provisions of this Act, or to the said orders and regulations, shall for each such offence forfeit and pay a sum not exceeding twenty pounds: provided always, that in all cases in which the principal or a considerable part of the value of any weirs has hitherto consisted in catching trout, the said commissioners are hereby authorised from time to time to regulate and to make orders for the regulation of such weirs, and of the boxes, cribs, and cruives therein, so as to lessen the space between the inscales and rails thereof respectively to such space as shall be fit and proper for the catching of trout.

Power to enforce the construction of fixed weirs, in conformity with the provisions of this Act.

LIX. And be it enacted, that if the proprietor or farmer of any weir, dam, dyke, crib, or box for the taking of fish shall not, on or before the first of *January*, one thousand, eight hundred and forty-three, or so far as relates to the enlarging or opening a free gap or Queen's share in cases where, under the provisions aforesaid, compensation is to be paid, within such time after the payment of such compensation as the said commissioners shall appoint, alter such dam, weir, or works, and complete or construct the same, or remove the illegal and objectionable parts thereof, so as to make the same conformable to the provisions of this Act, or to the orders and regulations of the said commissioners, it shall and may be lawful for the said commissioners to make or open, or order and direct, by a warrant under

their hands and seals, to be made or opened, a gap of the prescribed dimensions, and the tail and spur walls of such weirs or dams to be removed or altered, and the railwork or inscales of cribs not made in compliance with this Act to be removed, and all other necessary alterations to be made in such weirs, dams, or dykes, cribs, or boxes, at the expense of the offender; and it shall be lawful for the said commissioners, or any person authorised by them, to enter upon such dam, weir, or works as aforesaid, and to do all such Acts as shall be necessary for the execution of such warrant.

LX. And be it enacted, that in all cases where the said commissioners shall, by virtue of the provisions in this Act contained, open or cause to be opened in any weir, dam, or dyke, a gap of the dimensions prescribed by this Act, or remove any obstructions hereby declared to be illegal, it shall not be necessary for the said commissioners or any person executing their orders, to rebuild any part of such weir, dam, or dyke, or of the works appertaining thereto, nor to fix upon or erect altered or improved boxes, rails, or cruives, nor shall they be answerable or accountable for any damage or injury arising to such weir, dam or dyke, or to such box, rail or cruive, in consequence of such removal as aforesaid.

Commissioners not bound to do more than open the passages required by this Act, and not liable for consequential damages.

LXI. Provided always, and be it enacted, that nothing herein contained shall be construed to give any right whatsoever to any person to erect or maintain any weir, dam, or leader, which is, or shall be, an obstruction or hindrance to the navigation of any river, or to the free and uninterrupted discharge of the waters of the same, either for the purpose of draining the lands adjoining thereto, or of improving the water power thereof for the use of mills or factories; nor, except as hereinbefore provided with respect to stake and fixed weirs, shall

Nothing herein contained to legalize any weir, nor to empower any person to erect new weirs.

anything herein contained tend to legalize any weir now or which may be hereafter erected, for the erection of which a good, sufficient, and valid title in the law does not exist.

Natural obstructions in rivers may be altered or removed to allow of free migration of fish provided no injury done to mills, factories, or the drainage of lands.

LXII. And be it enacted, that if in any river, reefs, or ledges of rocks, shoals, or other natural obstructions, prevent and impede the free passage and migration of salmon, trout, and other fish, and hinder the approach and access of the same to the upper parts of the said rivers, or any lakes communicating therewith, and depositing their spawn therein, it shall and may be lawful for the said commissioners (if they so think fit), upon the application of any person interested in the fishery of such river or lake, who shall deposit or secure a sum of money sufficient for the purpose, to construct, authorise, or contract with any person interested in the fisheries in the said river to construct such works, and make such alterations in the bed of such river, as shall effectually secure a free and uninterrupted passage at all seasons of the year for salmon, trout, eels, and other fish; and the plan, sections, specifications, and contracts for all such works or alterations shall be previously sanctioned by the said commissioners; and for the purpose of executing any such work, and ascertaining all compensation for damage and other matters in relation thereto, the said commissioners and their officers and servants shall have and exercise all and every the powers and authorities vested in them as Commissioners of Public Works in *Ireland* under and by virtue of the several statutes in that behalf made and provided: Provided always, that such works or alterations in the bed of such river or rivers, shall not be made in such a manner as to injure the effective power of any mill or factory, or in any way to impede or interrupt the drainage of lands adjoining such river; and provided also, that reasonable compensation be made by the parties applying for any damage or injury

done or to be done or suffered consequently or otherwise in the execution of such works.

LXIII. And be it enacted, that every dam, weir, dyke, or other erection which shall after the passing of this Act be placed in or across any river frequented by salmon, for sustaining the water of such river for mill power, navigation, irrigation, or other purposes, shall be so built or constructed as to permit and allow of, in one or more parts of the same, the free run or migration of salmon, trout, and other fish at all periods of the year, and that such provision for the free passage of the fish through such dam, weir, or dyke as aforesaid shall be made at the expence of the person forming such dam, weir, or dyke, and in such manner as the said commissioners shall approve; and that with respect to weirs, dams, or dykes at present erected in or across rivers frequented by salmon, for sustaining the water of such river for mill power, navigation, irrigation, or other purposes, it shall be lawful for the said commissioners, if they shall deem it fit and necessary for the benefit of the fisheries thereof, on the application of one or more of the persons interested in the fishery of such river wherein the same shall be placed, and at the proper costs and charges of the persons interested in such fishery as aforesaid, to cause a survey of the said dam, weir, or dyke to be made by some competent engineer or surveyor, and to direct such alterations to be made therein, or such additional work to be added thereto, as shall in the opinion of the said commissioners be necessary and desirable, for the purpose of affording a free and uninterrupted passage to the fish frequenting such river, without impairing the navigation or lessening or impairing the effective working power of the mill or factory to which such dam, weir, or dyke belongs; and the owners or occupiers of all such mills or factories are hereby directed and required, at any time or times during which such

In all dams or weirs which shall be hereafter constructed, means shall be provided for the free migration of salmon and other fish.

In existing weirs and dams similar means for migration of fish shall be provided, no injury being done to navigation or power of mills.

mill or factory shall not be at work, or when the water-wheel or watercourses thereof shall not be undergoing such repairs as shall require the water above such mill to be run off, to stop and close up in dry seasons all other waste gates or overfalls, so as to direct and force the surplus water of such river or stream through the passage so prepared as aforesaid for the migration of salmon, trout, and other fish; and in case any such owner or occupier of such mill or factory shall neglect or refuse to comply with the directions herein-before contained, such person or persons so neglecting or refusing shall forfeit and pay for each such offence any sum not exceeding five pounds: Provided always, that the sluices which admit the water to the wheels of all mills or factories which derive their supply from rivers frequented by salmon shall at all seasons of the year be kept shut for twenty-four consecutive hours in each week, between the hours of six o'clock on *Saturday* afternoon and six o'clock on *Monday* morning, so that the water may be allowed to flow freely through any existing gap in such weir, dam, or dyke, or any passage formed as aforesaid, or where no such gap exists or passage shall be formed, through the waste gate on the up-stream side of the wheel sluices of such mill or factory, if such waste gate shall be erected in a channel suitable for the passage of fish; and provided that by the opening of such waste gate the mill shall not be thereby deprived of the necessary supply of water for the full and efficient working of the same; and if the occupier of such mill or factory shall neglect or omit to keep shut for the time aforesaid the sluices admitting the water to the wheels of such mills or factories, or shall obstruct or allow to be obstructed the free discharge of the water through such gap or passage, or shall neglect to keep open during the time aforesaid, and subject to the provisions aforesaid, such waste gates, then and in every such case such occupier shall forfeit and pay a sum not exceeding five pounds for each offence.

LXIV. And be it enacted, that it shall not be lawful for any person to take; kill, or destroy any salmon or other fish, or hang, fix, use, or set in any such passage so made as aforesaid in or through such natural obstructions, mill dams, weirs, or other similar works, any net, basket, or other engine or contrivance whatsoever for the taking of fish, or to place any obstacle or contrivance of any nature or kind soever in or near thereto, in order to deter or prevent fish from freely entering or passing up and down through the same at all periods of the year, but such passage so made as aforesaid shall be kept and preserved free from every obstruction, and all such obstructions shall be removed in like manner as is herein-before provided with regard to the free gap or Queen's share in fishing weirs; and every person offending contrary hereto shall for every such offence forfeit and pay any sum not exceeding twenty pounds; and in case the person who shall have actually committed any such offence, so far as relates to the dams of mills or factories, shall not be known or found, and if such offence shall have been committed under such circumstances as shall appear to the justice or justices before whom any complaint thereupon shall be made to afford reasonable grounds for believing that such offence was committed by some person in the employment or under the control of the owner or occupier of such mill or factory, or that it was committed with the knowledge or contrivance of such owner or occupier or the person in charge of such mill or factory, or through the default of reasonable precaution on the part of such owner or occupier to prevent such offence, then and in every such case such owner or occupier of such mill or factory shall be deemed and taken to be liable to and shall incur the penalty aforesaid, as if such offence had been actually committed by him.

Free passage for migration of fish in natural obstructions or in dams shall be preserved in like manner as Queen's share in other weirs.

LXV. And be it enacted, that in the inland and freshwater portions of rivers and lakes in *Ireland*, No person to use nets for the taking of salmon in the

land rivers where
no several fishery
exists.

no person save the owner of a several fishery within the limits thereof, shall, at any period of the year lay, draw, make use of, or fish with haul, draft, seine, or other net for the taking of salmon or trout, unless in cases when a general public right of fishing for salmon with such nets, in the nature of a common of piscary, has been enjoyed for a space of twenty years next before the passing of this Act; and if any person shall offend contrary hereto such person so offending shall forfeit all such nets so used, and shall also forfeit and pay a sum not exceeding ten pounds.

Size of meshes
and nets in inland
rivers and lakes.

LXVI. And be it enacted, that no person shall in the freshwater portion of any inland river or lake, lay, draw, make use of, or fish with (save as herein otherwise provided) any haul or draft net or seine, the meshes whereof shall be under two and a quarter inches from knot to knot measured on the side of the square, or nine inches measured all round in the clear, when wet, allowing to each mesh four knots; and that no person shall make use of or fish with any such net formed with a false bottom, (except nets for the taking of eels), or shall place two or more such nets one behind the other, or use any nets covered with canvas, hide, or other substance, for the purpose of taking small fish, or shall affix or keep up continued nets stretched across any river; and that no person shall lay, draw, make use of, or fish with any nets within the limits of any several fishery without a licence in writing from the owner or renter of such fishery; and that no person shall place, affix, or attach any nets to any stakes, bridges, sluices, lock gates of canals, or other such fixed erections, or shall lay, draw, or fish with any nets whatsoever, except nets for the taking of eels as by this Act provided, within the close season for salmon, as fixed by any Act now in force in *Ireland*, or which after the first day of *January* one thousand eight hundred and forty-four shall become

Regulations as to
such nets and
their use.

fixed by this Act, or be fixed by the said commissioners as aforesaid, or at any season of the year between six of the clock on *Saturday* evening and six of the clock on *Monday* morning; and if any person shall offend in any of the cases aforesaid he shall forfeit every net used in doing or committing such offence, and shall for the same forfeit and pay any sum not exceeding ten pounds.

LXVII. Provided always, and be it enacted, that it shall be lawful for the said commissioners, if they shall so think fit, on the application of the proprietor of any fishery in the fresh-water portion of any inland river or lake, to give notice by advertisement in the newspapers published or circulating in the county or counties wherein such river or lake is situated or in whole or in part flows, that it is proposed to authorize in such lake or river the use of floating, draft, or other nets of such form and with meshes of such size as shall be described in such notice, and in the said notice to call upon and require every person interested in such fishery to make, in such manner as the said commissioners shall prescribe, his objections (if any) to the use of such nets as aforesaid; and at the expiration of three months from the date of the said notice it shall be lawful for the said commissioners to hold a meeting, giving three weeks previous notice thereof by advertisement as aforesaid, of the persons interested in such fishery, for the purpose of deciding with regard to the use of such nets as aforesaid, and thereupon, and after hearing the parties, it shall be lawful for the said commissioners to authorize, if they shall so think fit, the use of nets of a smaller size than and different form from those already prescribed by this Act, and such decision shall be published and notified in the manner herein-before prescribed in the case of a change of seasons; and it shall be lawful for the said commissioners to alter or revoke such decision at or any time after the ex-

Commissioners empowered to authorize different form and size of mesh in the inland rivers upon due inquiry had.

piration of three years, and the same proceedings towards the so doing as are herein-before prescribed in relation to the first change shall take place on each such future change, and any person or persons offending against any decision so made and published as aforesaid shall be subject and liable to the like penalties and forfeitures as if such rule or order had been contained in this Act.

Penalty for using
unlawful nets.

LXVIII. And be it enacted, that if any person shall hang, draw, or make use of any net of any description prohibited by this Act, or the use whereof shall from time to time be prohibited by the said commissioners, the person so offending shall forfeit such net and shall also forfeit and pay any sum not exceeding five pounds.

Angling.

LXIX. Provided always, and be it enacted, that nothing in this Act contained shall be construed to hinder or prevent the proprietors of any lands adjoining any lake or river, and not being within the limits of a several fishery, or any person authorized by them, from taking, catching, or fishing for salmon, trout, and other fish with rods and lines in any such lake or river: Provided always, that no person shall angle for salmon or trout, in any lake or river during the close season prescribed by any Act now in force in *Ireland*, or which shall, after the first day of *January* one thousand eight hundred and forty-four, become fixed by this Act, or by any order of the said commissioners, and that any person so angling shall forfeit and pay a sum not exceeding five pounds.

Cross lines prohibited.

LXX. And be it enacted, that it shall not be lawful for any person (save the proprietor of a several fishery, or any person duly authorized by him in writing, within the limits thereof,) to take, catch, or fish for any salmon or trout by means of cross lines in any river, and any person so offending

shall forfeit and pay a sum not exceeding five pounds.

LXXI. And be it enacted, that if any person or persons shall enter upon any lands or premises for the purpose or under the pretence of fishing or angling in any lake, river, stream, pond, or water without authority in writing from the proprietor or occupier of such lands or premises, every such person shall forfeit and pay a sum not exceeding the sum of two pounds for every such offence.

Penalty on persons entering lands without permission.

LXXII. And be it enacted, that if any person or persons shall remove, take, use, or employ any cot, barge, boat, or vessel without permission of the owner thereof, such person so offending shall for every such offence forfeit and be liable to pay a sum not exceeding the sum of two pounds.

Penalty for taking or using boats without permission.

LXXIII. And be it enacted, that if any person shall wilfully take, sell, purchase, or have in his possession the spawn, smolts, or fry of salmon or of trout or of eels, or in any way or by any device wilfully obstruct the passage of the said smolts or fry, or injure or disturb any such spawn or fry, or any spawning bed, bank, or shallow where the same may be, such person shall forfeit and pay a sum not exceeding ten pounds for each and every such offence, and all nets, engines, and devices used in the taking of the same, or whereby any such injury shall be caused, shall be forfeited.

Penalty for having, taking, or attempting to take, fry and spawn of salmon, trout or eels.

LXXIV. And be it enacted, that if any person shall at any time wilfully take, kill, destroy, expose to sale, or have in his possession any red, black, foul, unclean, or unseasonable salmon or trout, such person shall forfeit and pay any sum not exceeding two pounds for every such fish so taken, killed, destroyed, exposed to sale, or in his possession: Provided always, that if any person shall take or catch

Penalty for having taking, or offering for sale any unclean or spent fish.

any such fish accidentally, and return the same immediately to the water without injury, such person shall not be liable to the penalty aforesaid.

Penalty for any person taking or attempting to take fish or the fry of fish, in works appurtenant to mills or factories, or in water-courses diverted from rivers for such purposes.

LXXV. 'And whereas great destruction of spent fish and fish about to spawn, and of the brood and fry of salmon and other fish, is occasioned by the owners and occupiers of mills and factories catching and destroying the same by nets and various other devices in the mill leads, mill dams, and water-courses appurtenant thereto;' for remedy whereof be it enacted, that if any person shall, at any season of the year, in any mill pool or mill dam, or in any works appurtenant to any mill or factory, or in any of the watercourses leading the water to or from such mill or factory, place, lay, set, or draw any net, grate, creel, or other engine, or use any means or device whatsoever, (save and except rod and line used subject to the provisions of this Act,) for the purpose of taking, destroying, or obstructing any salmon or other fish, or the fry thereof, every such person so offending shall for every such offence forfeit and pay a sum not exceeding ten pounds, and shall also forfeit such nets or other engines; and in case the person who shall have actually committed any such offence shall not be known or found, and if such offence shall have been committed by means of shutting down or closing any gate or sluice which is under the exclusive power of the occupier of any mill or factory, or if such offence shall have been committed under such circumstances as shall appear to the justice or justices before whom any complaint thereupon shall be made to afford reasonable grounds for believing that such offence was committed by some person in the employment or under the control of the owner or occupier of such mill or factory, or that it was committed with the knowledge or connivance of such owner or occupier or the person in charge of such mill or factory, or through the default of reasonable precaution on the

part of such owner or occupier, to prevent such offence, then and in every such case such owner or occupier of such mill or factory shall be deemed and taken to be liable to and shall incur the penalty and forfeiture aforesaid, as if such offence had been actually committed by him.

LXXVI. And be it enacted, that in all water-courses, cuts, channels, or sluices constructed for the purpose of conveying water from any river frequented by salmon, for the supply of towns, the irrigation of lands, or any purpose other than the supply of water for navigation, or as a moving power for machinery, or for fish ponds, there shall be placed and fixed by the occupier of such water-courses, cuts, channels, or sluices, at their points of divergence from and return to such river, and above and below such sluices, a grating or lattice (the space between the bars whereof shall not exceed two inches in any place) extending across the whole width of such watercourse, cut, channel, or sluices, and from the bottom of the bed or sill thereof respectively to the level of the highest winter or flood waters; and during the months of *March*, *April*, and *May*, and such other periods of the year as the brood or fry of salmon or trout shall be descending the rivers, there shall be placed or stretched over the entire surface of such grating a wire lattice or network of such dimensions as effectually to prevent the admission of salmon fry or other small fish into such watercourses, cuts, channels, or sluices; and the owner, lessee, or occupier of any such premises to which such watercourse leads, or other person making or using or having the care and maintenance of any such watercourse, cut, channel, or sluice, shall secure and fix the said grating, lattice, or wire-work in a permanent manner, so as to prevent the same from being removed or opened, and shall keep and preserve the same in constant repair, and in case any such owner, lessee, or occupier shall

A grating shall be placed in all water-courses diverted from rivers to prevent salmon, trout, or fry entering therein.

neglect so to do, he shall for every such neglect forfeit and pay any sum not exceeding ten pounds.

Penalty for taking salmon or trout, or their fry in eel weirs.

LXXVII. And be it enacted, that if the proprietor or tenant of any eel weir shall take or suffer to be taken therein any salmon or trout, or salmon or trout fry, or spent salmon, every such proprietor or tenant shall forfeit and pay for each and every such offence any sum not exceeding ten pounds.

Penalty for attempting to take salmon, trout, &c. at night in inland rivers, &c., or using lights, &c. for such purposes.

LXXVIII. And be it enacted, that if any person shall between sunset and sunrise, have or use any light or fire of any kind, or any spear, gaff, stroke-all, or other such instrument, with intent to take salmon or other fish in or on the banks of any lake or river, or if any person shall be found at any time chasing, injuring, or disturbing spawning fish or fish on the spawning beds, or attempting to catch fish in such places (except with rod and flies only, within the lawful period), or damming or teeming or emptying any river or mill race for the purpose of taking or destroying any salmon or trout, or the fry thereof, every person so offending in any of the cases aforesaid shall forfeit all such instruments, and shall also forfeit and pay any sum not exceeding ten pounds.

Penalty for fishing in private ponds.

LXXIX. And be it enacted, that if any person shall kill, take, or destroy any carp, tench, bream, roach, perch, eel, pike, trout, cray-fish or any other fish, in or out of any pond, private canal, or reservoir, wherein the same are kept, and wherein he has no property, without the consent or license of the owner of such pond, private canal or reservoir, and be thereof convicted, every such person for every such offence shall forfeit any sum not exceeding ten pounds.

Penalty on persons throwing or allowing matters

LXXX. And be it enacted, that no person shall throw, empty, or cause to run or flow into any river

or lake any dye stuff, or other deleterious or poisonous liquid, or shall throw into such river or lake any lime, spurge, or other deleterious or poisonous matter, or shall steep in such river or lake any flax or hemp, and if any person shall so offend he shall forfeit and pay for every such offence any sum not exceeding ten pounds: Provided always, that nothing in this Act contained shall extend or be construed to render any person liable to the penalties hereby imposed for casting into any river or stream any dye stuffs or other materials which are not of a deleterious nature, or which are not in a state poisonous to fish or other animals using the waters thereof.

LXXXI. And be it enacted, that every boat, cot, or curragh shall have upon some conspicuous place thereof the name of the owner, or of one of the owners where more than one, and of his place of residence, painted in clear legible characters or letters of not less than two inches in length; and in default thereof the owner, or any person found using such boat, cot, or curragh, shall forfeit and pay any sum not exceeding two pounds.

The names of owners shall be painted on fishing boats.

LXXXII. 'And for the better protecting and preserving of fisheries, and for the due enforcement of the laws regulating the same,' be it enacted, that it shall and may be lawful for any person interested in the preservation of the fish of any river or lake, or for any persons who shall have united themselves into a society for the preservation of the said fisheries, or for the owner or proprietor of any fishery in any river or lake, or the proprietor of any salmon fishery on the sea coast, to appoint during pleasure, by any instrument in writing, in the form in Schedule (A.) to this Act annexed, any one or more persons to be a water bailiff or water bailiffs for the protection of the fisheries on such part of the sea coast, or in any such lake or river, or the

Proprietors of fisheries in rivers or on the coast empowered to appoint water bailiffs to protect the fisheries of the river or lake in which they shall be interested.

tributaries thereof: Provided always, that no such water bailiff shall be empowered to act as such until his appointment shall have been approved and confirmed by two or more justices assembled in some Petty Sessions holden in the district within which the said water bailiff is to act, which justices shall endorse the instrument by which he is appointed; and provided also, that it shall be lawful for any two or more justices at Petty Sessions, from time to time, upon complaint made to them, to revoke such appointment, and dismiss any such bailiff, and to approve and confirm an appointment of such other person as shall be appointed in the place of the person so dismissed.

Water bailiffs.

LXXXIII. And be it enacted, that if any person shall act as a water bailiff without an appointment confirmed as aforesaid by the justices and unrevoked by them, every such person shall, for every such act, forfeit any sum not exceeding ten pounds.

Powers of water bailiffs for the protection of the fisheries.

LXXXIV. And be it enacted, that every water bailiff appointed as aforesaid shall be empowered to exercise the powers and authorities of a constable for the enforcement of the provisions of this Act, and shall be at liberty at all times and seasons, without any let or hindrance whatsoever, to enter into and pass through or along the banks or borders of any lakes or rivers frequented by salmon or trout, or of the tributaries thereof, for the protection of the fisheries whereof he shall be so appointed as aforesaid, and with boats or otherwise to enter upon all and every such lakes or rivers, and to enter upon and examine all weirs, sluices, mill dams, mill races, and watercourses communicating therewith, and to pass along the same, and to enter any boat or boats engaged in fishing, and to examine all standing, floating, or other nets whatsoever, and to seize all illegal nets, engines, instruments, and de-

vices whatsoever, and all and every other nets, engines, and instruments whatsoever when used illegally, and to do all such other acts and things as he shall be required to do by the bye laws of the said commissioners, or by any warrant issued by any justice or justices in conformity with the provisions of this Act, and the production of such certificate or appointment, endorsed as aforesaid, shall be sufficient warrant for such water bailiff so acting in any of the cases aforesaid: Provided always, that nothing herein contained shall be construed to authorize any such water bailiff to enter any garden enclosed with a wall or paling, nor any dwelling house or the curtilage thereof, (except where the ordinary road or passage to any weir, dam, or dyke shall be through any such garden or curtilage as aforesaid), save when thereunto authorized by the warrant of a Justice of the Peace as herein-after provided.

LXXXV. And be it enacted, that it shall and may be lawful for any justice of the peace, upon an information on oath that there is probable cause to suspect any breach of the provisions of this Act to be committed within any of the herein-before excepted grounds and premises, by warrant under his hand and seal, to authorise and empower by name any water baliff, or any officer appointed by the said commissioners, to enter the said excepted premises for the purpose of detecting such offence, at such time or times, in the day or night, as in such warrant may be mentioned; provided that no such warrant shall continue in force for more than one week from the date thereof.

Justice may grant a warrant to enter suspected places.

LXXXVI. And be it enacted, that it shall and may be lawful for such officers and petty officers belonging to the cruisers of her Majesty's navy, and for such officers and men of the coast guard stations as shall be thereunto authorized by the commissioners

Officers and men of her Majesty's cruisers, and officers and men of coast guard service, empowered to enforce

provisions of this Act.

of her Majesty's customs, at such times and in all such places, and subject to such directions and regulations as the said commissioners of customs shall from time to time think fit to prescribe, to go on board any vessel employed in fishing, and examine the certificate of registry and nets of such vessel, and whether the regulations of this Act have been complied with, and whether the master and other persons on board such vessel are carrying on the said fishery in the manner hereby required, and to seize any illegal nets or engines, or any nets or engines used contrary to the provisions of this Act, or any of the orders, regulations or bye laws made by said commissioners; and it shall be lawful for the officers and men employed in the coast guard service in *Ireland* to execute, for the purposes of this Act, on sea or on land, the warrants of any justice or justices, as fully and effectually as any person or persons authorized and empowered to execute warrants of any justice or justices in *Ireland* may now execute the same on land within their respective districts, and also to do all such other acts on sea or land in relation to the preservation of the peace among persons engaged in fishing, and the enforcement of the provisions of this Act, as any constable may lawfully do within his jurisdiction.

Officers and men of the coast guard empowered to act as constables.

Offenders may be apprehended if they refuse to tell their names.

LXXXVII. And be it enacted, that when any person shall be found, at sea, or on rivers, lakes, or other waters, or on land, offending against any of the provisions of this Act by the use of any illegal net, engine, or device whatsoever for the taking of fish, or by the use of any net, engine or device prohibited at such time, or in any other manner, it shall be lawful for any officer or person herein-before empowered to enforce the provisions of this Act, or for any person interested in the fishery in which such illegal act may be committed, to require the person so found offending forthwith to desist from such offence, and also to tell his Christian name,

surname, and place of abode; and in case such person shall, after being so required, refuse to tell his real name or place of abode, or shall give such a general description of his place of abode as shall be illusory for the purpose of discovery, or shall wilfully continue such offence, it shall be lawful for the officer or person so requiring as aforesaid, and also for any person acting by his order and in his aid, to apprehend such offender, and to convey him or cause him to be conveyed, as soon as conveniently may be, before a justice of the peace, to be dealt with according to law: provided always, that no person so apprehended shall on any pretence whatsoever be detained for a longer period than twenty-four hours from the time of his apprehension before he shall be brought before some justice of the peace; and that if he cannot, on account of the absence or distance of the residence of any such justice of the peace, or owing to any other reasonable cause, be brought before a justice of the peace within such twelve hours as aforesaid, then the person so apprehended shall be discharged but may nevertheless be proceeded against for his offence by summons or warrant, according to the provisions herein-after mentioned, as if no such apprehension had taken place.

LXXXVIII. And be it enacted, that where any persons, to the number of three or more together, shall be found by an officer of her Majesty's navy, or of the coast guard, or any water bailiff or peace officer, by violence, intimidation, or menace impeding or obstructing, or attempting to impede or obstruct, any other person or persons in the lawful prosecution of any fishery, it shall be lawful for such officer of the navy or coast guard, or water bailiff or peace officer so requiring, and also for any person acting by his order or in his aid, to apprehend such offenders, and to convey them before a justice of peace, to be dealt with according to law; and every person so offending by such violence, intimidation, or menace

Penalty on persons using violence.

as aforesaid, and every person then and there aiding or abetting such offender, shall, upon being convicted thereof, forfeit and pay for every such offence such penalty, not exceeding twenty pounds, as to the convicting justice shall seem meet, together with the costs of the conviction, which said penalty shall be in addition to and independent of any other penalty to which any such person may be liable for any other offence against this Act.

Commissioners,
Inspectors, &c.,
empowered to en-
force provisions of
this Act.

LXXXIX. And be it enacted, that it shall and may be lawful for the said commissioners, or any officer appointed by them for the purposes of this Act, to use and exercise all and every the powers and authorities for enforcing the provisions of this Act and the apprehension of offenders by this Act conferred upon the officers of her Majesty's cruisers and of the coast guard stations and water bailiffs respectively.

Penalty on oppo-
sing or assaulting
commissioners, or
persons autho-
rized by them, in
execution of this
Act.

XC. And be it enacted, that if any person shall assault, resist, or obstruct any of the said commissioners, or any person acting by their authority, or any officer of her Majesty's navy or coast guard, or any person acting under him or them, or any water bailiff, in the execution of any of the powers conferred on him or them by this Act, or by any rule, order, or bye law to be made in pursuance of this Act as aforesaid, or if the master of any fishing vessel shall refuse to produce his certificate of registry when thereunto required by any such commissioner, officer, or person, every person so offending shall for every such offence forfeit and pay any sum not exceeding ten pounds.

Commissioners
empowered to
make bye laws for
protection and im-
provement of
fisheries.

XCI. And be it enacted, that it shall be lawful for the said commissioners, from time to time as may become necessary, to make and ordain such bye laws, rules, orders, and regulations (in addition to those herein specifically required to be made), as to them the said commissioners shall seem expedient

for the more effectual government, management, protection, and improvement of the fisheries of *Ireland*, and the registry of all boats engaged therein, and from time to time to repeal, rescind, or vary the same, and substitute others in lieu thereof, and to impose and prescribe any conditions and restrictions for the regulations of the said fisheries, and the preservation of good order among the persons engaged therein, and in relation to the times and seasons at which the taking the several species of fish shall commence and cease, or the times and places or the manner at and in which any trammel, trawl, or other net or nets, engine or engines to be employed in the said fisheries shall be used, and also as to the description and form of nets to be used in the said fisheries, and the size of the meshes thereof, or to the prohibition thereof, or of any practice whatsoever, tending in the opinion of the said commissioners to impede the taking of fish, or to be in any manner detrimental to the said fisheries, or as to any other matter or thing which shall in any manner relate to the government and protection of the said fisheries; and it shall be lawful for the said commissioners to impose any penalty not exceeding five pounds in all cases where any penalty is not fixed by this Act, for any breach of such bye laws, rules, orders, and regulations, and to direct that all nets, engines, or other instruments whatsoever used contrary to any of such bye laws, rules, orders, or regulations shall be forfeited, destroyed, or removed, as the case may require: provided always, that all such bye laws, rules, orders, and regulations be not repugnant to any law or statute in force in *Ireland*, and shall not injure the effective working power of any mill or factory, and shall be approved of and confirmed by the Lord Lieutenant or other chief governor or governors of *Ireland*, for the time being in council; and all the said bye laws, rules, orders, and regulations, when so approved and confirmed, shall be binding and conclusive on all persons as if the same had been contained in and enacted by this Act.

Copies of intended
bye-laws to be sent
to clerk of peace,
&c., and notice
given thereof.

XCH. Provided always, and be it enacted, that one month at least before such bye laws, rules, and regulations shall be laid before the Lord Lieutenant or other chief governor or governors for the time being in council, for his or their approval, a copy of the same shall be deposited with the clerk of the peace for each county in *Ireland* in which such bye laws, rules, and regulations are proposed to be enforced, and with the clerks of the petty sessions for each district in which it is proposed the same shall be enforced, and a notice of the lodgment thereof shall be posted at the usual places for posting notices in each such petty session district; and it shall be lawful for any party who may consider himself aggrieved by any such intended bye laws, rules, and regulations to appeal to the Lord Lieutenant or other governor or governors for the time being in council against such intended bye laws, rules, and regulations.

Publication of
bye-laws.

XCH. And be it enacted, that the said bye laws, rules, orders, and regulations, when approved and sanctioned as aforesaid, shall be printed, and a copy of the same shall be deposited with the clerk of the peace for each county in *Ireland* in which such bye laws are proposed to be enforced, and with all the coast guard officers at the different stations, and with the clerks of petty sessions for each district in which it is proposed the same shall be enforced in *Ireland*, and in such and so many different places as to the said commissioners shall seem fit; and printed copies of said bye laws, rules, orders, and regulations shall be provided by the said commissioners, and sold at a price not exceeding one shilling for each copy, and notice both of the publication of the same and the place or places where the same may be bought shall be given for three months subsequent to the publication thereof in such of the metropolitan and provincial newspapers as the said commissioners shall appoint; and for the purpose of convicting any person offending against the said bye laws, rules,

orders, and regulations, a printed copy of such bye laws, obtained from the office of any clerk of the peace or clerk of the petty or quarter sessions (who is hereby required to furnish the same at the price aforesaid), with whom the same may be lodged and certified by him to be a true copy thereof, shall be received and taken as full and sufficient evidence of the existence of such bye law, and the due publication thereof.

XCIV. And be it enacted, that all offences whatsoever which by virtue or under the authority of this Act, or of any rule, order, regulation, or bye law to be made pursuant to the provisions of this Act, are or shall be subject to or punishable with any pecuniary penalties, fines or forfeiture, shall and may in every case be heard, adjudged, and determined in a summary way by and before one or more justice or justices of the peace of the county, town, or place within whose jurisdiction such offence shall have been committed, upon the complaint, verbal or otherwise, of any person; and that the said justice or justices shall proceed to the determination of any such complaint in the presence of any offender brought before him or them, in pursuance of any of the provisions herein-before contained, or else shall issue a summons for the appearance of such offender at the petty sessions of the district within which such offender may be tried, according to the provisions of this Act; and the justices at such petty sessions shall, upon proof of the personal service of such summons, or upon proof of such summons having been left at or on board the vessel, or at or posted on the known residence of such person so offending, proceed to the determination of any such alleged offence; and that if, upon confession of the party, or on the oath of any one or more credible witness or witnesses (which oath the said justice or justices is and are hereby respectively empowered and required to administer), the party accused shall appear to

How offences
against this Act
may be tried.

Penalty to be recovered by distress and sale of offender's goods.

have committed such offence, then and in every such case the said justice or justices shall and may impose upon the offender such fine or fines as by this Act, or by any of the bye laws, rules, orders, and regulations to be made in pursuance thereof, such offender is or are made subject and liable to; and the amount of such fine or fines, together with the costs of conviction, shall be ascertained by such justice or justices, and shall be forthwith paid by the party or parties so convicted as aforesaid; and in case of nonpayment thereof then the same, together with the costs of conviction and recovery to be ascertained as aforesaid, shall and may, by warrant under the hand and seal or hands and seals of such justice or justices, (which he and they is and are hereby authorized and required to grant,) be levied and recovered by distress and sale of the goods, chattels, and effects of such offender wheresoever the same can be found, and that the surplus (if any) arising from such distress and sale, after deducting such fine or fines, together with the costs of conviction and the reasonable expences attendant upon such distress and sale, shall be rendered to the owner or owners of the goods, chattels, and effects so distrained; and that it shall and may be lawful to and for such justice or justices to order the offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless the said offender or offenders shall give sufficient security to the satisfaction of such justice or justices for his or their appearance on such day as shall be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking such security, and which security the said justice or justices is and are hereby empowered to take by way of recognizance or otherwise; and that if upon the return of such warrant it shall appear that no sufficient distress can be found, or in case the said fine or fines and such costs as aforesaid shall not be forthwith paid, or in case it shall appear

If no goods or chattels, the offender may be imprisoned.

to such justice or justices, either by confession of the offender or otherwise that such offender hath not sufficient goods, chattels, or effects, whereout such fines and costs may be levied, it shall and may be lawful to and for the said justice or justices, by warrant under his or ther hand and seal, to commit such offender or offenders to the common gaol, or any bridewell, house of correction, or other prison in the said county, there to remain without bail or mainprize for any time not exceeding two calendar months where the fine imposed shall not exceed five pounds, and not exceeding three months in any case unless such fine or fines, together with all such costs and expences as aforesaid, shall be sooner paid and satisfied.

XCV. And be it enacted, that whensoever under the provisions of this Act any justice of the peace or the said commissioners, may be authorised or empowered to execute any work, or remove or alter any weir or other erection, or to do any matter or thing, at the expence of any offender, such justice or commissioners, as the case may be, shall ascertain the amount of such expences, and direct payment thereof to be made by such offender to such person as he or they may think fit, and it shall be lawful for such person to sue for and recover the same by civil bill or by action or suit in any of the superior courts in *Dublin*; and a certificate in writing, under the hand or hands of such justice or commissioners, as the case may be, shall be conclusive evidence of the amount of such expences, and of the liability of the party therein named to pay the same, and of the right of the person thereby authorised to sue for and recover the same. Recovery of expences.

XCVI. And be it enacted, that the jurisdiction of each and every justice and justices of the peace of every place within or belonging to all counties, or counties of cities or towns in *Ireland*, any part Jurisdiction of magistrates of maritime counties extended to offences against this Act at sea.

whereof shall adjoin the sea coast, or any of the estuaries thereof, shall be and the same is hereby extended to all and every offences or offence against the provisions of this Act, or any of the bye-laws, rules, orders, or regulations (hereby authorised to be made) committed by fishermen and others engaged in fishing, or by any person or persons whatsoever while at sea, as fully and effectually to all intents and purposes as if the said offences or offence had been committed upon land within his or their present jurisdiction or jurisdictions respectively; and that it shall and may be lawful for the said justice or justices to issue his or their warrant for the arrest or apprehension of any of the said fishermen or others so offending as aforesaid, whether he or they shall happen to be upon land within any part of the kingdom or in any vessel at sea, and employ any person or any of the ways and means for causing such apprehension or arrest to be made as such justice or justices are now authorised and empowered to do in case the said offence had been committed upon land within his or their respective jurisdiction or jurisdictions; and that the said justice or justices shall have the like powers or remedies for the apprehension, committal, or punishment of fishermen, and other persons so offending at sea as aforesaid, either against this Act or any of the bye-laws, rules, and regulations to be made in pursuance thereof; and also that the said justice or justices shall have the like powers and remedies for the seizure at sea of the vessels or other goods and chattels of the said fishermen or other persons so offending as aforesaid, as he or they possess by any law or statute now in force, or shall under this Act possess in case the said offence or offences had been committed upon land, or the said goods and chattels had been upon land within his or their respective jurisdiction or jurisdictions. .

XCVII. And be it enacted, that all penalties directed to be enforced against any person or persons offending contrary to the provisions of this Act shall be levied by the same persons and in the same manner as all fines and penalties may by law be levied, or by the officers and men of the coast guard service.

The mode in which penalties are to be levied.

XCVIII. And be it enacted, that the justice or justices before whom any person shall be convicted of any offence against this Act shall cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect; (that is to say,)

Form of conviction.

‘Be it remembered, that on the day of
 in the year of our Lord at
 in the county of [or city, town, or place,
as the case may be,] *A. O.* is, upon the complaint of
G. H., convicted before me *J. P.*, one of her Majesty’s justices [or before us *C. D.* and *E. F.*, justices] of the peace for the said county of
 in pursuance of an Act made in the fifth and sixth years of the reign of her Majesty Queen Victoria, intituled *An Act to regulate the Irish Fisheries*, for that the said *A. O.* [*here state the offence, and the time and place when and where the same was committed*], and I [or we] do hereby adjudge him to pay and forfeit for the said offence the sum of
 of lawful money of *Great Britain*, together with the further sum of for costs of suit and prosecution of the said *G. H.*; [*and in case any net or other engines are to be forfeited,*] I [or we] do hereby further adjudge that the nets or other engines, *et cetera* [*describing the same*], be and the same are hereby forfeited. Given under my hand and seal [or our hands and seals, *as the case may be,*] at
 in the county of the day
 and year above written.’

Which said conviction and adjudication shall be good and valid in law to all intents and purposes,

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and shall not be quashed, set aside, or adjudged void or insufficient for want of form only, and shall not be liable to be removed by certiorari or otherwise into her Majesty's Court of Queen's Bench, or any other of her Majesty's Courts of Record at *Dublin*, but shall be deemed and taken to be final to all intents and purposes whatsoever, unless the same shall be reversed on appeal as herein-after provided: provided always that no person shall be convicted of any offence committed against the provisions of this Act unless the prosecution for the same shall be commenced within six calendar months from the time of the commission of such offence.

Appeal from convictions to Quarter Sessions.

XCIX. And be it enacted, that if any person shall think himself aggrieved by any judgment, order, or conviction of any justice or justices of the peace, such person may appeal to the next general quarter sessions to be held in the division of the county or for the city or place where such judgment, order, or conviction shall have been given, made or had, provided such general quarter sessions shall be held at any time not less than twenty-one days after the time such conviction shall have been had; and in case such general quarter sessions shall be held within twenty-one days from the time of such conviction, such appeal shall be to the general quarter sessions to be holden next but one after such conviction, in such division of the county, city, or place as aforesaid, and that no such appeal shall be allowed, received, heard, or determined unless the party appealing shall within ten days next after, or if such justice or justices shall think right so to require it, immediately on the pronouncing of such judgment, order, or conviction, enter into a recognizance, with two sufficient sureties, before such justice or justices, or before any other magistrate of said county, city, or place, in a sum not less than ten pounds, conditioned personally to appear at the said sessions to try such appeal and abide the judgment of the court, and to pay such

costs and expences as the justices at the said quarter sessions may award against him.

C. And be it enacted, that in case any such justice or justices shall dismiss any such complaint so made as aforesaid such dismissal shall be drawn up and signed by such justice or justices in the form following (that is to say,) Form of dismissal.

‘Be it remembered, that on the day of
in the year of our Lord C. D. of
was charged before me [or us] on the complaint of
A. B. of for that the said C. D. did
[here state the offences charged, and the time and place
when and where same was committed], contrary to
the provisions of an Act, intituled *An Act to regulate the Irish Fisheries*; and it appearing to me [or
us] that the said C. D. is not guilty of such offence
so charged against him as aforesaid by the said
A. B., we therefore do adjudge that the said complaint be and the same is hereby dismissed. Given
under my hand and seal [or our hands and seals, as
the case may be,] at in the county of
the day and year first above written.’

And if any person prosecuting shall feel aggrieved by such order of dismissal it shall and may be lawful for such person to appeal to such sessions as hereinbefore directed with regard to appeals from any conviction, upon giving the like notice as hereinbefore prescribed, and entering into a recognizance with two sufficient sureties before any magistrate, in any sum not less than ten pounds, conditioned for the payment of all such costs and expences as shall be adjudged against him on the hearing of such appeal. Appeal against dismissal.

CI. And be it enacted, that it shall and may be lawful for the justices assembled at such quarter sessions to re-hear the subject matter of such conviction or order of dismissal, and either affirm or re- Proceedings on appeal.

verse the same, or reduce any penalty which may have been adjudged, such reduction however not to be to a smaller sum than the lowest penalty hereby imposed for the commission of such offence, and in case such conviction shall be affirmed, it shall be lawful for such justices to award such costs and expenses to the prosecutor, and any witnesses who may be examined in support of such prosecution, as they may think reasonable, and in case the party appealing from any such order of dismissal as aforesaid shall not appear at such quarter sessions as aforesaid to prosecute the same, such order of dismissal shall be affirmed, and it shall be lawful for the said justices to award to the person accused such costs and expenses of witnesses as they may think reasonable; and in case any appellant or respondent on any such appeal shall not pay any costs or expenses which may be so awarded against him, his recognizances shall be estreated.

Lord Lieutenant may extend mercy to convicted persons.

CII. And be it enacted, that it shall be lawful for the Lord Lieutenant or other chief governor or governors of *Ireland* to extend the royal mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for nonpayment of money to some party other than the crown.

Illegal nets shall be brought before magistrates at Petty Sessions, and destroyed;

CIII. And be it enacted, that in case any officer or person hereby authorised and empowered to seize illegal nets or engines, or nets and engines of a legal form and size when used contrary to the provisions of this Act, or any of the bye-laws to be made in pursuance hereof, shall seize the same, it shall and may be lawful for him to retain the same in his custody until the next sitting of the petty sessions court, or any adjournment thereof, in the district where the same shall be seized, and at such Petty Sessions Court it shall and may be lawful for the justices to order and direct the same to be forfeited, and in case the same shall be such as cannot

and legal nets,

be legally used under the provisions of this Act, to order the same to be destroyed, and in case the same shall be such as may be legally used according to the provisions of this Act, that then and in such case it shall be lawful for such justices to order the same to be sold, and the money arising therefrom to be applied in the same manner as the penalties thereby imposed for violation of the provisions of this Act are hereby directed to be applied.

when used illegally, shall, upon being forfeited, be sold.

CIV. And be it enacted, that upon any trial or other proceeding for recovery of any penalty, fine, or forfeiture under this Act, no informer or other person who, in the event of a conviction, shall be entitled to any part, share, or proportion of the penalty to be recovered thereon, nor any owner or occupier, or other person interested in any fishery or fisheries shall be thereby incompetent to give evidence, but shall nevertheless be received and admitted as a witness or witnesses on such trial or other proceeding, and that such testimony shall, if believed, be sufficient thereon to all intents and purposes, as far as the same testimony could be if given by an indifferent person.

Evidence of informers and owners of fisheries, &c. admissible.

CV. And be it enacted, that if any person summoned to give evidence upon any trial or other proceeding under this Act before any justice or justices of the peace before whom any person offending against any of the provisions of this Act shall be tried shall, without reasonable excuse, to be allowed by such justice or justices, refuse or neglect to appear at the time and place to be for that purpose appointed, or if upon appearing he shall refuse to be examined upon oath, or in case of a Quaker or Moravian, upon solemn affirmation, or to give evidence before such justice or justices, and shall not make reasonable excuse for such refusal, to be allowed by such justice or justices, then and in any of the cases aforesaid such person shall forfeit and

Penalty on witnesses refusing to give evidence.

pay for every such offence any sum not exceeding the sum of five pounds, to be recovered in the same manner as any other penalty directed to be enforced by this Act, or that it shall be lawful for such justice or justices to commit such person to the county gaol, or to any bridewell, house of correction, or other prison in the said county for any period not exceeding one month; and in case such person shall wilfully make a false oath or affirmation in any such proceedings, every such person shall upon conviction be liable to all the penalties for wilful and corrupt perjury.

Offences on mear-
ing rivers may be
tried in either
county.

CVI. And be it enacted, that where any of the offences mentioned in this Act shall be committed in or upon any lakes, rivers, or streams forming the boundaries or mearing lines between any two counties, districts of Quarter Sessions or districts of Petty Sessions, such offence shall and may be prosecuted before any Justice or Justices of the Peace in either of such counties or districts, and may be alleged and stated to have been committed therein.

Return of convic-
tions at Petty or
Quarter Sessions
shall be made to
the commission-
ers.

CVII. And be it enacted, that a return or report shall be made once in every three months to the said commissioners from every Petty Sessions or other court in *Ireland* where any offender shall be prosecuted and convicted under the provisions of this Act by the clerk thereof, and such return or report shall contain the name of every person who shall be so convicted of any offence against the provisions of this Act, together with the nature of the offence, and the punishment inflicted, and the amount of the fine imposed and levied upon every such person so convicted as aforesaid; and any such clerk neglecting or omitting to furnish such return shall forfeit and pay a sum not exceeding five pounds.

Persons punished
under this Act

CVIII. And be it enacted, that where any offender shall be punished for any offence by virtue

of this Act such offender shall not again be prosecuted or incur any penalty by virtue of any other law or statute now in force, or be liable to any other punishment for the same offence. not liable under any other Act.

CIX. And be it enacted, that one moiety of every sum of money levied as a fine or penalty under this Act shall be paid to the informer or person who shall be the means of bringing to justice any person offending against the provisions of this Act, and the other moiety shall be paid to the said commissioners, for the execution of this Act, to be by them applied towards defraying the expenses of carrying this Act into execution. Application of penalties

CX. And be it enacted, that no action or suit shall be commenced against any person for any thing done by him by virtue of or in pursuance of this Act until twenty-one days' notice thereof in writing shall have been given to such person, or left at his usual place of abode, nor after a sufficient satisfaction, or a tender thereof, shall have been made to the party aggrieved, nor after six months next after the fact committed; and the defendant in such action or suit shall and may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act, and if the same shall appear to be so done, or if such action or suit shall be brought after the time herein-before limited for bringing the same, or shall be brought within twenty-one days notice thereof, or after a sufficient satisfaction made or tendered as aforesaid, that then the jury shall find for the defendant; and it shall and may be lawful for any defendant in any such action or suit, at any time prior to trial had in the said cause, to lodge in court such sum of money as to him shall seem fit, in discharge of such action, and that thereupon such proceeding shall be had in rela- Limitation of actions, &c.
General issue may be pleaded.

tion thereto as in other actions where money may now be lodged in court in discharge of any action pending therein.

Commissioners empowered to hold general meetings, summon witnesses, and examine upon oath.

CXI. And be it enacted, that it shall and may be lawful to and for the said commissioners to hold general meetings of proprietors of fisheries in any district, on giving due notice by advertisement or otherwise of the time and place when and where such meetings are appointed to be held, and to inquire into the state of the fisheries in each such district, and the best means to be adopted for the regulation, improvement, or protection thereof; and for the more effectual prosecution of such inquiry it shall be lawful for the said commissioners or any one of them to issue summonses requiring the attendance of such witnesses as they shall think fit, and to examine on oath touching any matter or thing in any way connected with the inquiry into the state of such fisheries as aforesaid, which oath the said commissioners or any one of them are hereby authorized and empowered to administer; and all such witnesses so summoned as aforesaid shall be liable to the same penalties for neglecting or refusing to attend or to give evidence before the said commissioners as are herein-before provided in the case of any person refusing to attend or give evidence before any justice or justices.

Commissioners to report annually.

CXII. And be it enacted, that the said commissioners shall, on or before the last day of *January* in every year, make a report to the Lord Lieutenant or other chief governor or governors of *Ireland* of the proceedings for the preceding year, and of the receipt and expenditure of any sums of money which the said commissioners shall, under the provisions of this Act, receive or expend, distinguishing the amount received on account of any penalties, and the officer or person from whom the same may have been received; and such report shall also

contain, as far as may be practicable, a statistical account of the said fisheries, arranged and classified under such different heads as may appear to the said commissioners to be most suited and adapted for the purpose, or as may from time to time be directed by the said Lord Lieutenant or other chief governor or governors; and a copy of every such report shall be laid before each House of Parliament if then sitting, or within three weeks after the commencement of the next session.

Copy of Report to
be laid before
Parliament.

CXIII. And be it enacted, that in the construction of this Act (except where the nature of the provision or the context of the Act shall exclude such construction) the word "net" shall extend to all descriptions of tackle, trawl, trammel, stake, bag, coghill, eel, haul, draft, and seine nets, and to all other engines or devices, of whatever construction or materials, or by whatever name known, which shall be used for the like purposes as the nets in this Act referred to; and the word "salmon" shall extend to all grilse, peal, sea trout, samlets, par, salmon fry, and all fish of the salmon kind; and the word "vessel" shall extend to a ship or a boat, cot or curragh; and the word "river" shall extend to all streams and watercourses; and the word "person" and the word "proprietor" shall extend to all bodies politic, corporate, aggregate, or sole, and also to any number of persons associated together as a company or partnership; and the word "county" shall extend and be applied to a county of a city and county of a town; and the word "estuary" shall extend to a harbour and a roadstead and a bay; and the word "waste" shall extend to all uncultivated or unprofitable lands; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and every word importing the plural number shall extend and be applied to one person or thing, as well as several persons or things;

Definition of
terms in this
Act.

and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Definition of "several Fishery."

CXIV. And be it enacted, that the words "several fishery" shall, for the purposes of this Act, be construed to mean an exclusive fishery, possessed and enjoyed as such by virtue of grant, patent, or charter, or by Act of Parliament, or by prescription; and in all rivers or parts of rivers or lakes where the tide does not ebb and flow, and which by law are not deemed public navigable rivers or lakes, and in which no such inclusive fishery as aforesaid shall have been possessed and enjoyed as aforesaid, the proprietors in fee of the adjoining lands shall be considered to be possessed of a several fishery within the bounds and limits of the said lands, or so far as they are seised or possessed of the soil and bed of such rivers or lakes: Provided always, that nothing herein contained shall be construed to lessen or abridge any public right of fishing by lawful means and in lawful seasons heretofore enjoyed and exercised within the limits of any such several fisheries.

Act may be amended this session.

CXV. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

SCHEDULE to which the foregoing Act refers.

SCHEDULE (A.)

Form of Warrant for a Water Bailiff.

I A.B. [or we A.B. and C.D., as the case may be],
 of [name the place or places of residence],
 do hereby appoint D. E. of [name the
 place of his residence] a water bailiff, to protect the
 fishery of [name the fishery, river, or sea]

coast, as the case may be], pursuant to the Act of
Victoria, chapter _____, intituled
“An Act to regulate the Irish Fisheries;” and the
said *D.E.*, of _____ [*name the place of his resi-*
dence] is hereby authorized to do all lawful acts as
such water bailiff, according to the provisions of the
said Act.

(Signed) *A.B.*

To all whom it may concern.

We, the undersigned Magistrates, assembled in
Petty Sessions, do hereby approve of the above ap-
pointment. In witness whereof we hereunto sub-
scribe our names.

J.P.

J.P.

7 & 8 VICTORIA, CAP. 108.

An act to amend an Act of the sixth year of her present Majesty, intituled *An Act to regulate the Irish fisheries*; and to empower the constabulary force to enforce certain provisions respecting the *Irish fisheries*. [5th September 1844.]

6 & 7 W. 4, c. 13.
s. 15.

5 & 6 Vict. c. 108.

Constabulary Force empowered to carry into effect certain regulations of the Fishery Act and of this Act.

‘WHEREAS an Act was passed in the sixth year of the reign of his late Majesty, intituled *an Act to consolidate the laws relating to the constabulary force in Ireland*, and it was thereby, among other things provided, that no chief or other constable or sub-constable appointed under that Act should be employed to enforce any Acts relating to the laws for the preservation of fish, except only in cases when forcible resistance shall have been actually made, and proved by information taken on oath: and whereas an Act was passed in the sixth year of the reign of her present Majesty, intituled *An Act to regulate the Irish fisheries*, whereby, among other things, certain regulations for the general preservation of the *Irish fisheries* during certain periods of the year, and the protection of the public interests therein, were made; and it is expedient that the constabulary force shall be empowered to enforce such regulations;’ Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the officers and men of the constabulary force in *Ireland* shall, any thing in the said first-recited Act to the contrary notwithstanding, have, for the purpose only of enforcing the regulations of the said recited Act of her present

Majesty's reign herein-after set forth, and of this Act, all such powers, privileges, and authorities as are by such Act conferred upon water bailiffs duly appointed thereunder, but subject nevertheless to such orders and restrictions, in respect of their being employed to enforce such regulations, as shall from time to time be made by the inspector general of the said constabulary force with the approbation of the Lord Lieutenant or other chief governor or governors of *Ireland*.

II. And be it enacted, that the regulations in enforcing which it shall be lawful to employ the officers and men of the said constabulary force shall be the regulations herein-after mentioned; (that is to say), all and singular the regulations made by the said recited Act of her present Majesty's reign and by this Act, or under any authority derived therefrom, for the observance and enforcement of the several periods fixed by or under authority of such Acts as the annual close seasons for the salmon fishery, the trout fishery, the eels fishery, and oyster fishery respectively, and for the free passage of fish during such several annual close seasons, and requiring for that purpose the making and maintaining of openings, and the removal of obstructions, and directing certain acts, matters, and things to be done, and prohibiting other acts, matters, and things to be done, during and in relation to such annual close seasons respectively; and also all and singular the regulations made by the said recited Act, or any authority derived therefrom for the observance and enforcement of the several weekly close seasons fixed by such Act, in reference to inland lakes and rivers, and in reference to the sea, or any estuary or tideway respectively, and for the free passage of fish during such weekly close seasons, and requiring for that purpose the making and maintaining of openings and the removal of obstructions, and directing certain acts, matters, and things to be done, and prohibiting other acts,

Regulations for the observance of the annual and weekly close seasons.

matters, and things to be done, during and in relation to such weekly close seasons respectively; and also all and singular the regulations of the said last recited Act prohibiting any person wilfully taking, selling, purchasing or having in his possession the spawn, smelts, or fry of salmon, or of trout, or of eels, or in any way or by any device wilfully obstructing the passage of the said smelts or fry, or injuring or disturbing any such spawn or fry, or any spawning bed, bank, or shallow where the same may be; and also all and singular the regulations of the said Act prohibiting any person wilfully taking, killing, destroying, exposing to sale, or having in his possession, any red, black, foul, unclean, or unseasonable salmon or trout; and also all and singular the regulations of the said Act prohibiting any person, in any season of the year, in any mill pool or mill dam, or in any works appurtenant to any mill or factory, or in any of the water courses leading the water to or from such mill or factory, placing, laying, setting, or drawing any net, grate, creel, or other engine, or using any means or device whatsoever (save and except rod and line used subject to the provisions of the said Act), for the purpose of taking, destroying, or obstructing any salmon or other fish, or the fry thereof; and also all and singular the regulations of the said Act prohibiting the proprietor or tenant of any eel weir taking or suffering to be taken therein any salmon or trout, or salmon or trout fry, or spent salmon; and also all and singular the regulations of the said last recited Act prohibiting, between sun-set and sun-rise, the having or using any light or fire, spear, gaff, strokeall, or other such instrument, with intent to take salmon or other fish in or on the banks of any lake or river, or chasing, injuring, or disturbing spawning fish or fish on spawning beds, or attempting to catch fish in such places (except with rod and flies only within the lawful period), or damming or teeming, or emptying any river or millrace for the purpose of taking or destroying any salmon or trout, or the fry thereof.

Regulations
against fishing
with lights, &c.,
at night.

III. 'And whereas by the said last-recited Act it is provided, that the commissioners for the execution of the said Act may, if they shall so think fit, decide that the period by the said Act appointed for the close time for the fisheries in particular localities shall cease, and that such other periods as shall be fixed upon by the said commissioners as the close time for any of such fisheries respectively shall be kept and observed in lieu thereof, or to alter the period within which it shall not be lawful to hang any coghill or other nets in the gaps, eyes, or sluices of eel or other weirs, or make use of fixed engines for taking eels: And whereas it is expedient for such purpose to extend to the inspectors of fisheries appointed by the said commissioners the power to hear and receive evidence, and to examine and enquire into the subject of such fisheries;' be it therefore enacted, that it shall and may be lawful for any inspector of fisheries by the said commissioners duly appointed, at the direction and by the order of the said commissioners, to attend at any meeting by the said commissioners convened respecting the fisheries in any particular locality; and that the said inspector of fisheries shall hear and receive all such pertinent evidence as shall be offered to him upon the subject of the said fisheries, and shall examine and inquire into the same upon oath (which oath the said inspector is hereby authorized and empowered to administer), or otherwise, and by all such means as may be deemed expedient by him, or as shall be by the said commissioners in that behalf directed; and that the said inspector shall, within one month after the said meeting shall have taken place, faithfully report to the said commissioners all the evidence he shall have so received, and the result of such examination and inquiry; and that it shall and may be lawful for the said commissioners to act upon such evidence, examination, and inquiry as if the same had been heard, taken, received, and made by the said commissioners themselves.

Inspector of fisheries empowered to receive evidence to enable commissioners to alter the close seasons in any river or district.

Commissioners
empowered to
close season on
shorter notice
than by last-reci-
ted Act directed.

IV. And whereas it is expedient that the said commissioners should be authorized to alter close seasons on shorter notice than in and by the said Act directed; be it enacted, that it shall and may be lawful for the said commissioners to alter the close time for the fishery in any particular locality, and that such other period as shall be fixed upon by the said commissioners as the close time for any fishery in any locality shall be kept and observed in such locality in lieu thereof, and to alter the period within which it shall not be lawful to hang any coghill or other nets in the gaps, eyes, or sluices of eel or other weirs, or make use of fixed engines for taking eels, upon calling a meeting of the persons possessed of or interested in any such fishery, giving notice of the day and place appointed for such meeting, not less than fourteen days from the date of such notice, by printed handbills and advertisement twice at least in some newspaper published and circulating in the county or several counties within which or on the coast whereof such fishery is in whole or in part situated, anything in the said Act of the sixth year of the reign of her present Majesty requiring a longer or other notice to the contrary notwithstanding.

Power to commis-
sioners to suspend
for a fixed period,
the oyster fishery
in any particular
locality.

V. And whereas it is by the said last-recited Act further enacted, that it shall not be lawful for any person between the first day of *May* and the first day of *September* in any year to dredge for, take, catch, or destroy any oyster or oyster brood, save and except when the season for taking the same shall be changed by the said commissioners, according to the provisions of the said last-recited therein-after mentioned Act; and it is expedient for the preservation, protection, and improvement of the oyster fisheries of *Ireland*, that in certain localities the power to dredge, fish for, or take oysters should be suspended and prohibited for certain periods; be it therefore enacted, that it shall and may be lawful for the said

commissioners, if they shall so think fit, upon the application of any person interested in any oyster fishery in any particular locality, to call a meeting of the persons possessed of or interested in such oyster fishery, after giving notice of such meeting in the manner by the said last-recited Act directed with respect to changing the periods within which it shall not be lawful to fish in fisheries in particular localities, and issuing such summonses as is by the said last-recited Act in that behalf directed, and by themselves or their inspector hearing and receiving all such pertinent evidence as shall be offered to them or him on the subject of the said fishery, and examining and enquiring into the same upon oath, or otherwise to decide upon, fix, and appoint a period, not exceeding the term of three years, within which it shall not be lawful to dredge for, take, catch, or destroy any oyster or oyster brood in such locality.

VI. And be it enacted, that such decision shall take effect and shall be published at the time and in the manner by the said Act directed as to the decision of the said commissioners respecting the close time of any district, lake, or river. Such decision to be published.

VII. 'And whereas it is enacted by the said Act of the fifth and sixth of her present Majesty, that no person shall, at any time between sun-rise and sun-set, set, either in the sea or within the tide-way in any estuary, any sea-net for the catching of herrings, or any trammel net, or leave any drag or other net in the water, between sun-rise and sun-set, except stake or fixed nets for the catching of salmon as therein-after provided, and save also seines or drift nets for pilchards or fish other than herrings: and whereas it has been found expedient to permit, under certain restrictions, the use of seine nets for the taking of herrings;' be it therefore enacted, that, notwithstanding any thing in the said recited Act to Use of Seine net lawful for herrings.

the contrary, it shall and may be lawful ~~to and~~ for all persons to use seine ~~nets for~~ the catching of her-rings, ~~save and~~ except in such places and at such times as shall or may hereafter be forbidden by any bye law, rule, or regulation to be hereafter made by the said commissioners.

When the com-missioners have defined the mouth of any river, a copy of such definition to be deposited with the clerk of the peace;

VIII. 'And whereas by the said Act of the sixth year of her present Majesty the commissioners for the execution thereof are authorized and empowered to define the mouths of rivers under the circumstances and for the purposes therein mentioned; and it is expedient to provide for the due publication of all definitions to be so made by the said commissioners, and proof thereof in all courts of law or justice;' be it therefore enacted, that when and so soon as the said commissioners shall and may from time to time define the mouth or entrance of any river, under the provisions of the said Act, a copy of the definition to be so made shall be deposited with the clerk or clerks of the peace for the county or counties in which the mouth or entrance of such river as so defined shall be situate; and in all cases when it shall hereafter become necessary to prove such definition in any court of law or justice or elsewhere, a copy, obtained from the office of any clerk of the peace with whom the same may be lodged, and certified by him to be a true copy thereof, shall be received and taken as full and sufficient evidence of the existence of such definition.

and a certified copy thereof to be evidence.

Act may be amended this session.

IX. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present session of parliament.

8 & 9 VICTORIA, CAP. 108.

An Act for the further Amendment of an Act of the Sixth Year of Her present Majesty, for regulating the *Irish* fisheries. [8th August 1845.]

WHEREAS an Act was passed in the session of Parliament holden in the fifth and sixth years of the reign of her present Majesty, intituled *An Act to regulate the Irish Fisheries*: And whereas one other Act was passed in the session of Parliament holden in the seventh and eighth years of the reign of her present Majesty, intituled *An Act to amend an Act of the Sixth Year of Her present Majesty, intituled 'An Act to regulate the Irish Fisheries: and to empower the Constabulary Force to enforce certain provisions respecting the Irish Fisheries*: And whereas it is expedient, for the better regulation and improvement of the said fisheries, to give further power and additional means for the purpose of more effectually carrying out the provisions of the said Acts, and to amend the said recited Acts in the several particulars herein-after mentioned: Be it therefore enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful to and for the Commissioners of her Majesty's Treasury of the United Kingdom of *Great Britain and Ireland*, by warrant under the hands of any three or more of them, if they shall so think fit, to appoint one person to be a commissioner of fisheries, to be associated with the Commissioners of Public Works in *Ireland* for the time being, and with them be a

5 & 6 Vict., c. 106.

7 & 8 Vict., c. 106.

Treasury may appoint an additional commissioner for fisheries;

and allow him a salary.

commissioner for the execution of the said recited Acts and this Act during pleasure, and to remove such commissioner, and to appoint another in the stead of the person so removed or dying or resigning; and it shall be lawful for the said Commissioners of her Majesty's Treasury to pay to such person to be so appointed such sum by way of annual salary as the said Commissioners of her Majesty's Treasury shall think fit; and such commissioner of fisheries, when so appointed, shall and may for the purposes of said recited Acts and this Act, have, use, and exercise all and every the like powers and authorities and have like privileges as are by said recited Acts or any of them vested in or given to the said Commissioners of Public Works or any of them; and all and every the powers and authorities in and by the said recited Acts and this Act given to or vested in the said Commissioners of Public Works, or which under the provisions of this Act may be used by or be vested in such new commissioner, may be exercised by the said Commissioners of Public Works, or by such new commissioner appointed under this Act, or by any one or more of them.

The use of illegal weirs and nets to be subject to the same penalties as for erection.

II. And be it enacted, that if any person shall, after the twentieth day of *August* one thousand eight hundred and forty-five, fish with or use any stake weir, stake net, bag net, fixed net, or any contrivance for placing or erecting any net or engines, which under the provisions of the said first-recited Act are prohibited to be placed or erected in any part of any estuary or the mouth or tidal part of any river where the breadth of the channel at low water of spring tides is less than three quarters of a mile statute measure, or which are prohibited to be placed or erected within the space of one statute mile seaward, coastwards, or inwards from or on either side of the mouth or entrance of any river into the sea, the inland portion of which is fre-

quented by salmon, and the breadth of which mouth, as now or hereafter to be defined by the said commissioners, is less than half a mile statute measure at low water of spring tides, any person so offending shall be subject and liable to such and the same penalty and penalties as by said first-mentioned Act the person or persons erecting or placing such weirs, nets, or contrivance for placing or erecting nets, are subject and liable to; and upon proof that any such weir, net, or contrivance has been so used or fished it shall be lawful for the Justices at Petty Sessions, or other the persons having jurisdiction to enforce the provisions of the said recited Acts or this Act, to direct the same to be forfeited and removed, and the materials thereof to be disposed of and dealt with in such and the same manner as by said first-recited Act is provided and directed in cases of the seizure of illegal nets, or legal nets when used contrary to law.

III. And whereas, notwithstanding the provisions of the said first-recited Act with regard to the erection and use of stake weirs, stake nets, bag nets, fixed nets, and contrivances for fixing or placing nets, the same or some parts thereof are in many instances erected and used in places prohibited by the said recited Act by parties who have no title so to do; and it is expedient, for the protection of public rights, and to prevent disputes, that the said commissioners should have power to suspend the use of such weirs, nets, and contrivances, and remove the same, in all cases where it shall appear to them that the same or any part thereof are illegally erected, placed, or used; and that the said commissioner should for such purposes have and use the same powers and authorities with respect to such weirs, nets, and contrivances, or any part thereof, as they are now authorized under the said first-recited Act to use and exercise in cases of weirs or nets and contrivances erected in such manner as in their

Commissioners
empowered to
suspend the
use of and re-
move illegal
weirs and nets in
places prohibited.

judgment to be injurious and detrimental to navigation: Be it therefore enacted, that it shall be lawful for the said commissioners, upon and after complaint being made to them in writing, signed by the party making the same, and setting forth the circumstances under which any such stake weir, stake net, bag net, fixed net, or contrivance, or any part of the same, is or shall be so erected or used contrary to the provisions of the said recited Acts or this Act, to summon before them the party or parties complained of to attend at some place near or convenient to that in which any such weir, net, or contrivance may be so erected and used; and the said commissioners shall accordingly, at the time and place mentioned in any such summons, upon proof of the personal service of such summons, or upon proof of such summons having been left at or on board the vessel, or at or posted on the known residence of the party or parties complained of, proceed to hear all such pertinent evidence as may be adduced before them by or on behalf of the party making such complaint, as well as the party or parties complained of; and if after hearing all such evidence the said commissioners shall so think fit and right it shall and may be lawful to and for the said commissioners to make an order or decision in writing under their hands and seals, declaring that such stake weir, stake net, bag net, fixed net, or contrivance, or any part thereof, is a nuisance, and shall be abated and removed; and the said commissioners are hereby empowered, by warrant under their hands and seals, to authorize any person to abate and remove any such stake weir, stake net, bag net, fixed net, or contrivance, or any part thereof, at the expence of the party or parties appearing to the said commissioners to have erected or used the same; and, subject to the appeal herein-after provided for, it shall be lawful to and for the said commissioners to order and direct that the materials of any such weir, net, or contrivance, or any part thereof, be

forfeited and sold, and the produce arising from such sale applied in such manner as is by the said first-mentioned Act provided in cases of illegal nets used, or legal nets illegally used, for fishing: Provided always, that nothing herein contained shall extend to any case where the party who erected or used such stake weir, stake net, bag net, fixed net, or contrivance acted under a fair and reasonable supposition that he had a right to do the act complained of, and shall, if so required by the said commissioners, give security, in such manner and in such amount not exceeding one hundred pounds as the said commissioners shall think fit, conditioned to appeal to the judges of assize within such time and in such manner and subject to such regulations as are herein-after provided in cases of appeals against any order or decision of the said commissioners as last aforesaid, and upon such appeal to establish or prove before such judges that he had a right or title to erect or use such weir, net, or contrivance, or any part thereof, at the time or in the place where the same may have been so erected or used; and it shall be lawful for such judges or one of them to hear and decide such matter as aforesaid as if the same were an appeal from an order or decision made by the said commissioners for the abatement as a nuisance of such weir, net, or contrivance or any part thereof, and thereupon to certify under their or his hands or hand their or his decision whether such party had or had not established or proved before them or him such right or title as aforesaid.

IV. Provided always, and be it enacted, that if ^{Appeal to judge of assize.} any person shall think himself aggrieved by any such order or decision of the said commissioners such person may appeal to the next going judges of assize at the assizes to be held for the county, county of the city or town, in which or on the shore or boundary of which any such weir, net, or contriv-

ance shall have been so erected or used, provided such assizes shall be held at any time not less than thirty-one days after the time the said commissioners shall have made any such order or decision; and in case such assizes shall be held within thirty-one days from the time of such order or decision, such appeal shall be made to the assizes to be held in and for such county, county of a city or town, next after such first assizes; and that no such appeal shall be allowed, received, heard, or determined, unless the party appealing shall, within twenty-one days from the date of such order or decision of the said commissioners, give notice in writing to the said commissioners of his intention to try such appeal; and it shall be lawful to and for the said judges of assize or one of them to try the subject matter of the said appeal, and decide whether the party appealing had a right to erect or use such weir, net, or contrivance, or any part thereof, at the time or in the place where the same may have been so erected or used: Provided always, that in case of such appeal being made, and notice given as aforesaid, the materials of such weir, net, or contrivance, or any part thereof, as the case may be, shall be deposited in the custody of such officer or men of the coast guard or constabulary, or with such other party or person as the said commissioners may direct or appoint for the purpose, there to remain and be kept until the matter of such appeal shall be decided as aforesaid, or until the time for prosecuting the same shall have expired, and if such decision shall be in favour of the appellant such materials shall thereupon be returned to such appellant.

No persons
other than those
entitled under
5 & 6 Vict., c. 106
to use nets, &c.,
on the coast of
Ireland.

V. And whereas under the provisions of the said first-recited Act the right to use stake weirs, stake nets, bag nets, and other fixed nets in the sea and tideways along the coast of *Ireland* is defined and declared, and certain persons are therein mentioned

and specified as the persons entitled to exercise such right as aforesaid: Be it therefore enacted, that if any person or persons, other than the persons entitled to exercise such right as aforesaid under the provisions of the said first-recited Act, shall erect, use, or fish with any stake weir, stake net, bag net, fixed net, or contrivance for placing or erecting nets on any parts of the coast of *Ireland*, or in the sea or tideways adjoining the same, he or they shall for each offence forfeit and pay a sum not exceeding ten pounds, and such weir, net, or contrivance shall also be forfeited; and ordered by the magistrate before whom such person or persons may be convicted to be removed at the expense of the offender, and the materials thereof disposed of in like manner as by said first-recited Act is directed in cases of illegal nets used, or legal nets used illegally, for fishing. Penalty.

VI. And be it enacted, that if, after any such order or decision of the said Commissioners as is in this Act herein-before authorized to be made, unless and until the same shall be reversed on appeal, any person shall again erect or use any such stake weir, stake net, bag net, fixed net, or contrivance, or any part thereof, as aforesaid, in or adjoining or contiguous to any place where it may have been ordered and decided by the said commissioners that any such weir, net, or contrivance, or any part thereof, should be abated and removed, or if, contrary to the provisions of the said first-recited Act, any person shall erect, re-erect, or use any such weir, net, or contrivance, or any part thereof, after conviction under the said Act of any person for erecting, or under this Act for using or fishing with, any such weir, net, or contrivance, or any part thereof, in the same place, or in, adjoining, or contiguous to the same, every such person shall, in addition to the penalties in and by the said Act or this Act prescribed, forfeit and pay a sum not ex- Persons re-erect-
ing or using weirs
decided to be ille-
gal subject to a
penalty for each
day the same may
remain.
5 & 6 Vict., c. 106.
s. 22.

ceeding twenty pounds for every day such weir, net, or contrivance, or any part thereof, as aforesaid, shall remain so erected or used; and it shall be lawful to and for the said commissioners, by warrant under their hands and seals, from time to time and as often as any such weir, net, or contrivance, or any part thereof, as aforesaid, shall be so erected or used, to abate and remove the same.

Application to
Presentment
Sessions for
compensation for
malicious injury
to legal fishing
weirs.

VII. And be it enacted, that in all cases of maliciously or wantonly injuring or destroying any weir, net, or other contrivance legally erected or used for taking fish, any person injured by any such offence, and intending to apply for compensation for any loss or damage sustained thereby, on serving the like notices, lodging the like application, and taking like proceedings (as nearly as the nature of the case will admit) as in and by an Act passed in the session of Parliament holden in the sixth and seventh years of the reign of his late Majesty, King William the Fourth, intituled, *An Act to consolidate and amend the Laws relating to the Presentment of Public Money by Grand Juries in Ireland*, are respectively required in cases of applications for compensation for malicious injuries under the said last-mentioned Act, shall be entitled to make application at presentment sessions as in and by the said Act provided as to cases of malicious injuries: and such application having been considered and dealt with at such presentment sessions in the manner in the said Act directed with regard to applications for compensation for malicious injuries, it shall and may be lawful for the grand jury of the county, county of a city, or county of a town in or on the shores or boundary of which or adjacent whereto such injury shall have been sustained, and such grand jury are hereby required, either to disallow such application altogether, or present such sum or sums of money as the person or persons so injured ought to receive for such injury or damage, to be

6 & 7 W. 4. c. 116.

Grand Jury to adjudge.

levied off such county, or such barony, parish, district, townland, or sub-denomination thereof, as the grand jury shall direct: provided always, that such application and presentment shall be subject and liable to the like traverse and all other proceedings, and be subject to the like regulations and provisions, as by the said Act of the sixth and seventh years of King *William the Fourth* any application or presentment for compensation for malicious injuries is subject and liable to under the said Act, and as if such regulations and provisions were herein repeated.

VIII. And be it enacted, that in case such malicious injury as aforesaid shall be committed on the verge or within the distance of one mile of the boundary of any two or more counties, the person or persons who shall sustain such injury may apply for compensation in the manner herein-before directed in either or any one of such neighbouring counties, and all proceedings shall be taken thereupon as herein-before provided, and in and by the said Act of the sixth and seventh years of King *William the Fourth* directed; and in case any sum or sums of money shall be presented by the grand jury of the county where such application shall be made, or shall be finally awarded by the verdict of any jury, as and for compensation to the person or persons applying as aforesaid, the judge at the assizes of such county shall have power and authority to apportion the amount of such compensation amongst such neighbouring counties, and to direct the proportion of the same which shall be paid by such counties respectively, and shall certify the same accordingly, and such presentment shall thereupon be diminished or presentment made according to the proportion which the said judge shall direct to be paid by such county; and the grand jury or grand juries of the said other neighbouring county or counties respectively shall and

In case of injury done on the verge of two or more counties, the amount may be apportioned thereon.

they are hereby required, on the production of the certificate of such judge declaring the proportion to be paid by such county or counties, to present such proportion to be raised in the manner mentioned in the said Act of the sixth and seventh years of King *William* the Fourth, and paid to the person so applying : provided always, that no such presentment as aforesaid shall be considered as conferring or confirming any title in or upon the party making such application as aforesaid.

Commissioners to
define distances
from mouths of
rivers.

IX. And be it enacted, that in all cases where the said commissioners, under the provisions of the said first-recited Act, have heretofore defined or may hereafter define the mouth or entrance into the sea of any river, it shall and may be lawful for the said commissioners, in addition to such definition and determination as aforesaid, to define and determine the points of termination of the respective distances prescribed by the said first-recited Act, and to illustrate and show by a map or plan, or otherwise as they may consider best, the said points of termination, and the space or spaces within which it is by the provisions of the said first-recited Act prohibited to erect or use certain fishing weirs, nets, or engines, or to use or practise certain modes of fishing.

Additional
powers to enforce
observance of the
weekly and other
close times.

X. And whereas it is found expedient to give additional powers to enforce the strict observance of the weekly and other close times and seasons in and by the said first-recited Act required to be observed and kept : be it therefore enacted, that it shall and may be lawful for all officers and men of the navy or coast guard service, and of the constabulary, and for any person appointed by or acting under the authority of the said commissioners, when and as often as they or any of them shall, in any fishing weir, net, or contrivance, during the weekly or other close time or season (as fixed under the provisions of the

said first recited Act), find any passage shut, closed, or obstructed, or during such close time in any place find any net or other contrivance placed or used where the same are now by law or may hereafter be prohibited by the said commissioners, in pursuance of the powers in them vested, or shall at any time find any obstruction in the Queen's share or free gap through or over any fishing or other weir, or in the sluice passages appurtenant to any mill or factory at any time when the sluice gate of same shall be open, then and so often to open such passages and remove all such obstructions, doing no unnecessary damage, and to seize and remove all nets or parts of nets which may be found so as aforesaid placed or used contrary to the provisions of the said first-recited Act or this Act: Provided always that nothing herein contained or done in pursuance of the same shall exempt any person from the penalties and forfeitures in and by the said first-recited Act prescribed in respect to any of the matters aforesaid; and provided also, that none of the parties or persons hereby authorized to open such passages or remove such nets or obstructions shall be liable for any damage caused by the opening of such passages, or removal of such nets or obstructions, unless the same shall be unnecessarily, wantonly, or maliciously done.

XI. And whereas it has been found that the size of the meshes of nets (not made of wood, iron, or other rigid materials,) for the taking of salmon and trout in the sea and tideways, and the size of the meshes of all nets to be used in the inland and freshwater portions of rivers, as fixed and prescribed by said first-recited Act, is too large, and permits the escape of great quantities of valuable fish, as well as diminishes the value of much of the fish that may be taken: Be it therefore enacted, that so much of the said first-recited Act as fixes or prescribes the size of the meshes of any such nets as aforesaid

Size of the
meshes of the
nets.

shall be and is hereby repealed, and that from and after the passing of this Act no net, save as herein-after provided, for the taking of salmon or trout in the sea, estuaries, or tideways, or for the taking of any fish in the inland and fresh-water portions of rivers and lakes, shall be used with a mesh of less size than one and three quarter inches from knot to knot, to be measured along the side of the square, or seven inches, to be measured all round each such mesh, such measurements being taken in the clear, when the net is wet; and that if any person shall use any net contrary to this provision, such person shall be liable and subject to the penalties and forfeitures by said first-recited Act mentioned and prescribed in cases of any person using nets with meshes of less size than the size in the said Act prescribed and limited.

Commissioners
may alter the size
of meshes in cer-
tain localities.

XII. Provided always, and be it enacted, that it shall and may be lawful for the said commissioners, by any byelaw to be made in accordance with the provisions of said first-recited Act, and for such time as to them shall seem fit, to alter, in and for any particular district or locality, the size of the meshes of the nets as herein prescribed, and to permit the use of meshes of such other size in the said district or locality as the said commissioners shall prescribe; and all parties using nets with meshes of a less size in such district or locality than such as shall be so permitted and prescribed by the said commissioners shall be subject and liable to like penalties and forfeitures as by said first-recited Act mentioned and prescribed in cases of any person using nets with meshes of a less size than the size prescribed by said first-recited Act.

Stamp duty in
the appointment
of water bailiff.

XIII. And be it enacted, that the appointment of each water bailiff under the provisions of the said first-recited Act or this Act shall be subject to a stamp duty of five shillings, and to no higher duty, any-

thing in any other Act or Acts to the contrary notwithstanding.

XIV. And be it enacted, that it shall and may be lawful for the said commissioners, from time to time, by any byelaw made in pursuance of the provisions of said first-recited Act (subject to such penalties and forfeitures as by the said first-recited Act they are empowered to impose for the breach of any byelaw) to prohibit the use, at any time or season, of any engine or device for the capture of fish which, upon inquiry had, the said commissioners shall deem to be injurious to the fisheries.

Power to prohibit the use of engines injurious to fisheries.

XV. And be it enacted, that it shall and may be lawful for the said commissioners (anything in the said first-recited Act to the contrary notwithstanding) to make and ordain, in the manner and under the regulations in the said first-recited Act mentioned, any byelaw authorizing the use between sunrise and sunset of any trammel or other net on any part of the coasts of *Ireland*, or the islands lying off the same, where such trammel or other nets may, in the opinion of the said commissioners, be used during the daytime without injury to the fisheries.

Commissioners may permit the use of trammel or other nets during the daytime.

XVI. And be it enacted and declared, that nothing in the said first-recited Act shall be construed to protect, as an exclusive right or private property, any oyster bed or oyster fishery lying below the level of the lowest water of spring tides, or to subject any person to be deemed guilty of or to be indicted for larceny for taking oysters from any such oyster bed or fishery, unless such oyster bed or fishery shall be legally possessed and enjoyed by some person by virtue of charter, grant, patent, or Act of Parliament, in and by which such oyster bed or fishery is specially granted, and the limits thereof accurately described, or unless the same has been held and enjoyed by prescription as an exclusive

Oyster beds below lowest water of spring tide not to be deemed private property, unless held by charter or prescription.

right and private property within limits clearly defined.

Power to make
oyster beds.

XVII. And whereas the cultivation and improvement of the oyster fisheries may be greatly promoted by the formation and protection of artificial oyster beds or layings of oysters on the shore, above the level of the lowest water of spring tides, and for this purpose it is expedient to permit the formation and cultivation of such oyster beds, and to provide for the protection of the same in such and the same manner as by the said first-recited Act is provided for the making and protection of bait beds: be it therefore enacted, that it shall and may be lawful for the owner or occupier of any land bordering on the sea, or any estuary, with the permission in writing of the said commissioners, or for any person or persons with the consent of such owner or occupier, and with the permission in writing of the said commissioners, to form or plant any oyster bed or laying on the shore adjacent to such lands, and between high and lowest water mark of spring tides, and it shall be lawful for the several persons forming or planting any such oyster bed or laying to hold the same as private property, and to exercise an exclusive control over the same, and such oyster beds shall be entitled to the like protection as by said Act is provided in case of any other oyster beds or layings being the exclusive property of any person: provided always, that the forming and planting of such oyster beds as aforesaid shall not give any exclusive right or title to the occupancy of the said shore, except for the purpose aforesaid, or to the appropriation of any public banks or beds at present resorted to for oysters, but that the rights herein-before granted and conferred are to be considered as exclusively applying to places where no such public oyster beds at present exist; saving to the Queen's most excellent Majesty, and all the subjects of this realm, the free and full exercise and enjoyment of all other rights of fishing or other rights whatsoever in or along the

said shore, subject to the provisions herein and in said recited Acts or any of them contained.

XVIII. Provided also, and be it enacted, that if Persons stealing from such beds guilty of larceny. after the formation and laying of such oyster beds as aforesaid any person shall interfere with or take away any of the oysters from such beds, without the consent of the owners or occupiers of such bed, every person so offending shall be deemed guilty of larceny, and being convicted thereof shall be punished accordingly.

XIX. And be it enacted, that for the purpose of Power to dredge during part of close time for oysters to supply beds. replenishing and supplying such artificial oyster beds or layings, or other beds and layings the exclusive property of any person or persons, but for no other purpose whatsoever, it shall and may be lawful for any person to dredge for and take oysters from any natural public bed lying below the level of the lowest water of spring tides, during such part only of the close season as now fixed or hereafter to be fixed under the provisions of said first-recited Act as the said commissioners shall upon inquiry think fit to appoint for such purpose, for or in any district or place: provided always, that if any oysters dredged or taken during such part of the close season shall be brought to shore, or sold or offered for sale, or be found in the possession of any person on land, or be used for any other purpose than the replenishing or supplying any such artificial or other bed as aforesaid, every person so offending shall forfeit all such oysters, and be subject and liable to the same penalties and forfeitures as by said first-recited Act prescribed in cases of offences against the provisions of the said first-recited Act for the observance of the close season in respect to oysters.

XX. And be it enacted, that it shall and may be Commissioners to make bye-laws for improvement of oyster fisheries. lawful for the said commissioners from time to time to make and ordain, in the manner and with and under the powers and regulations in the said first-

recited Act mentioned, such bye laws, rules and regulations as to them the said commissioners shall seem expedient, to prevent the destruction or removal from the natural beds of small unsizeable oysters, and to fix by any such bye laws, rules, or regulations the size or dimensions of the smallest oysters which may be removed from such beds, and to appoint such means to be adopted in the dredging and culling of the oysters on the fishing grounds as will secure the return to the sea of all oysters of less dimensions than those to be so fixed, and during any part of the close time, or in places where in pursuance of said second-recited Act dredging for oysters shall be prohibited for a certain period, to prohibit, if they shall so think fit, that any boat shall have on board a dredge or other implements for the taking of oysters, and to make such other rules and regulations as to them shall seem fit for the increase, improvement and protection of the oyster fisheries.

Proprietors of
oyster beds may
appoint water
bailiffs.

XXI. And be it enacted, that it shall and may be lawful for any proprietor or tenant of any oyster bed or laying, or for any associated body of persons interested in the protection and improvement of any oyster fishery, to appoint, in the same manner and subject to the same restrictions and provisions as in and by the said first-recited Act and this Act are provided for the appointment of water bailiffs, any person or persons to be a water bailiff or water bailiffs for the protection of any such oyster fishery, and for the due enforcement of the provisions of the said recited Acts and this Act in respect of the same, and of the bye laws, rules, and regulations now or hereafter to be made by said commissioners in relation thereto; and the water bailiffs so to be appointed shall have and may exercise and use all and every the same powers and authorities, and have the same privileges as by the said recited Acts or this Act are vested in or given to the water bailiffs appointed or to be appointed thereunder, so far as the same may be necessary for the purposes aforesaid.

XXII. And be it enacted, that all orders and decisions, judgments and definitions, which shall be made, pronounced, or given by the said commissioners under the provisions of the said recited Acts or this Act, shall be recorded in the office of the said commissioners, and a copy of each such order, decision, judgment, or definition (as the case may be) shall be deposited with the clerk or clerks of the peace for the county or counties to any part of which, or the sea bordering on which or any part of which, the same shall relate or apply; and in all cases where it shall hereafter become necessary to prove any such order, decision, judgment, or definition in any court of law, or justice, or elsewhere, a copy obtained from the office of any clerk of the peace with whom the same may be lodged, and certified by him to be a true copy thereof, shall be received and taken as full and sufficient evidence of the existence of any such order, decision, judgment, or definition; and any such order or decision, judgment or definition, shall not be quashed, set aside, or adjudged void or insufficient for want of form only, and shall not be liable to be removed by certiorari or otherwise into her Majesty's Court of Queen's Bench, or any other of her Majesty's Courts of Record in *Dublin*.

Decisions and judgments of commissioners to be recorded, and copies to be evidence.

XXIII. And be it enacted, that the several penalties, forfeitures, and expences directed or empowered to be imposed, levied, recovered, or enforced under the provisions of the said recited Act of the seventh and eighth years of the reign of her present Majesty or this Act, or by any bye law, rule, or regulation made or to be made by the said commissioners in pursuance of the said recited Acts or this Act, may be recovered, levied, enforced, and applied in like manner and by such ways and means as are provided by the said first-recited Act of the fifth and sixth years of the reign of her present Majesty as to the penalties, forfeitures, and expences imposed or provided thereby.

Penalties and forfeitures to be recovered and applied as directed by 5 & 6 Vict. c. 106.

Commissioners
to have same
powers, authori-
ties, and privi-
leges under this
Act as under
5 & 6 Vict. c 106.

XXIV. And be it enacted, that the said commis-
sioners shall, as to all matters and things done or to
be done under the provisions of the said Act of the
seventh and eight years of her Majesty, or this Act
have, use, and exercise the like powers and autho-
rities and have the like privileges as are by the
said first-recited Act of the fifth and sixth years of
her Majesty vested in or given to the commissioners
of public works, or any of them, under the said
first-recited Act.

Interpretation of
words in this
Act.

XXV. And be it enacted, that the said herein-
recited Acts of the fifth and sixth years of her Ma-
jesty's reign and of the seventh and eighth years of
her Majesty's reign shall continue and be in full
force and effect, save and except so far as the same
are or either of them is altered by or inconsistent
with any of the provisions of this Act, and that the
said Acts and this Acts shall be construed together
as one Act; and that in the construction of this Act,
except where the nature of the provisions or the
context of this Act shall exclude such construction,
the words, "net," "salmon," "vessel," "river,"
"person," "proprietor," "county," and "estuary,"
shall be construed to have the meaning and extend
and be applied as in the said first herein-recited Act
is directed and provided; and the words "said com-
missioners," in the said recited Acts or this Act,
shall be construed and mean and extend and be
applied to the commissioners of public works for the
time being and any commissioners to be appointed
under this Act, or any one or more of them; and
the expression "Judge of Assize" shall, as to cases
arising in the county of *Dublin* or county of the
city of *Dublin*, mean and include a judge of any of
her Majesty's superior law courts of Record in
Dublin at Nisi Prius at the sittings next after the
pronouncing of any order or decision appealed from,
or if such sittings shall commence within twenty-one
days after the pronouncing of any such order or

decision, then at the sittings next but one from the pronouncing of such order or decision; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the words "close time," or "close season" shall, when used in the said Acts or this Act, be construed to mean the time or season within which it is or may be prohibited to fish for, take, or destroy, by certain specified means, or by any means whatsoever, as the case may be, any of the particular kinds of fish prohibited to be fished for or taken by such specified means, or by any means, as the case may be, during such time or season.

XXVI. And be it enacted, that the word "salmon" in the said recited Acts and this Act shall also mean and be construed to extend to and include the fish called pollen or fresh-water herring, and the fry and spawn thereof; and all the provisions of the said recited Acts and this Act for the protection and regulation of the salmon fisheries shall extend to and include such pollen, save and except that the close season for said pollen shall be the same as that fixed by the said first-recited Act for trout, unless such close season for pollen shall be altered by the said commissioners in pursuance of the powers vested in them for altering the close time of any district, lake, or river; and during the open fishing time for such pollen, it shall be lawful that the same may be fished for or taken by such nets or other means as the said commissioners shall authorize, sanction, or direct.

"Salmon" to include pollen or fresh-water herring.

XXVII. And be it enacted, that this Act may be amended or repealed by any Act to be passed during this present session of Parliament.

Alteration of Act.

9 & 10 VICTORIA, CAP. 114.

An Act for the further Amendment of an Act of the Sixth Year of Her present Majesty, for regulating the *Irish Fisheries*. [28th August 1846.]

WHEREAS an Act was passed in the session of Parliament holden in the fifth and sixth years of the reign of her present Majesty, intituled *An Act to regulate the Irish Fisheries*: And whereas the same was amended by an Act of the seventh and eighth years of the reign of her said Majesty, and was again amended by another Act of the eighth and ninth years of the reign of her said Majesty; and it is by the said first-recited Act, amongst other things, enacted, "that from and after the first day of *January* in the year one thousand eight hundred and forty-four no fish of the salmon kind shall be taken in or from any river, lake, or estuary whatsoever, or on the sea coast, between the twentieth day of *August* in any year and the twelfth day of *February* in the year following, by any person, save and except in any river, lake, or estuary, or any part of the sea coast, where the catching of salmon shall be permitted during such period by the said commissioners, in conformity with the powers therein-after vested in them for that purpose:" And whereas it is expedient that the said first-recited Act, and the Acts amending the same, should be further amended in relation to the close time or close season for salmon: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the

5 & 6 Vict. c. 106.
7 & 8 Vict. c. 108.
8 & 9 Vict. c. 108.

So much of re-

passing of this Act so much of the said recited provision as specifies the said close time or close season in which no fish of the salmon kind shall be taken shall be and the same is hereby repealed, save and except as to any matter or thing heretofore done, or any penalty heretofore incurred in respect of the same; and from and after the passing of this Act, as regards the rest of *Ireland* and the sea coast thereof (save the counties herein-after mentioned and the sea coast of the same) no fish of the salmon kind shall be killed, destroyed, or taken by any person or by any means whatever, in or from any estuary or on the sea coast, or in or from the tideway of any river or lake, or the part thereof where the tide ebbs and flows, at any time between the first day of *September* in each year and the thirty-first day of *January* in the year following, both the said days inclusive; and no fish of the salmon kind (save as herein-after provided) shall be killed, destroyed, or taken by any person or by any means whatsoever, in or from any part of any river or lake above the tideway, or portion thereof where the tide ebbs and flows, at any time between the fifteenth day of *September* in each year and the last day of *February* in the year following, both the said days inclusive: Provided always, that in any such part of any river or lake above the tideway, or portion thereof where the tide ebbs or flows, no fish of the salmon kind shall be killed, destroyed, or taken between the first and fourteenth days of the month of *September*, both the said days inclusive, by any person, by means of any weir, crib, cruive, box, trap, draw net, haul net, fixed net, or other net or device whatsoever, save by rods and lines only.

cited provision as defines the close time for salmon repealed.

Close time for salmon in the sea and tideways shall be from 1st of September to 31st of January inclusive.

Close time for salmon in rivers or lakes above tideway from the 15th of September to last day of February inclusive, but from the 1st to the 14th of September salmon shall be taken only by rod and line.

II. And whereas in many of the rivers aforesaid permanent or fixed weirs, with boxes, cribs, or cruives, for the taking of salmon, are now held under charter, patent, grant, Act of Parliament, or prescriptive right, and are placed or constructed wholly

Nothing to prevent owners, &c. from using fishing weirs above termination of tideway, and within two miles

therefrom, during
the month of
February.

or partially across such rivers, in the fresh-water portions thereof, above the place where the tide ceases to flow: And whereas in such cases where any such permanent or fixed weirs are situate within two miles from the place where the tide ceases to ebb and flow, and no fishing or other weir is situate or interposed between such permanent or fixed weirs and the place where as aforesaid the tide ceases to ebb and flow, good fish of the salmon kind may, without injury to the fisheries, and with advantage to the public, be taken during the month of *February* in each year: Be it therefore enacted, that nothing herein-before contained shall be construed to prevent the owners or tenants of such weirs so circumstanced as aforesaid from using the same, and it shall be lawful for them to use the same, to take therein or thereat fish of the salmon kind, in such boxes, cribs, or cruives of such weirs, or by the drawing of nets at or near such weirs, or in any part of such rivers between such weirs and the tideway, or portion thereof where the tide ebbs and flows, during any part of the month of *February*, in like manner as if such weirs were situate within the tideway or place where the tide ebbs and flows: Provided always, that in all other respects such weirs, and the persons using, possessing, tenanting, or fishing the same, shall be subject to the provisions of the said recited Acts and this Act in relation to the same.

Weirs, &c., to be
subject to provisions of recited
Act, &c.

In certain counties the close
time to be from
20th of August
to 31st of
January.

III. And be it enacted, that in any of the following counties, or on the sea coast of the same, or any of them; (that is to say,) the counties of *Antrim*, *Tyrone*, *Donegal*, *Londonderry*, *Mayo*, *Fermanagh*, *Leitrim*, and *Sligo*, no fish of the salmon kind shall be killed, destroyed, or taken by any person or by any means whatever in or from any river, lake, or estuary whatsoever, or on the sea coast, between the twentieth day of *August* in any year and the thirty-first day of *January* in the year following, both the said days inclusive.

IV. Provided always, and be it enacted, that nothing in this Act contained shall prevent any person from killing, destroying, or taking any fish of the salmon kind during such periods as aforesaid, or any of them respectively, in or from any river, lake, or estuary, or on any part of the sea coast where the catching of salmon shall be permitted during such periods or any of them respectively by the said commissioners, in pursuance of the powers vested in them for that purpose by the said first-recited Act, or any Act or Acts amending the same.

Nothing herein contained to prevent fishing in any lake, estuary, or on the sea coast where the fishing shall be permitted by the commissioners.

V. And be it enacted, that the said respective close times for fish of the salmon kind, as fixed by this Act, shall be observed and kept in the like manner in every respect as the close time for such fish by the said recited Acts or any of them provided; and the observance thereof respectively shall and may be enforced by all the means, powers, persons, and authorities, provided in respect of such close time in the said recited Acts, or any of them; and the provisions of the said recited Acts, so far as the same are applicable and not varied by this Act, shall be extended and applied to the respective close times hereby fixed, as if the same had been set forth in the said recited Acts; and all persons guilty of any breach of any of the provisions of the said Acts or any of them, or this Act, relating to such respective close times, or offending in any respect against the provisions of this Act, shall be liable to the like penalties and forfeitures as are provided by the said recited Acts or any of them, as if the respective times, periods, matters, and things herein provided to be observed and done were set forth in the said recited Acts, and the matters and things provided to be done for observance of the close season in the said Acts were set forth in this Act; and all such powers, authorities, and provisions for or in relation to the enforcement of the observance of the close

Penalties, forfeitures, and regulations for enforcing observance of close season.
5 & 6 Vict. c. 106.

7 & 8 Vict. c. 106, secs. 1, 2.
8 & 9 Vict. c. 108, secs. 1, 10, 14, 23, 24.

season or seasons, or for or in relation to the altering of the close season or seasons, provided and given by the said recited Acts or any of them, shall extend and apply to the subjects and purposes of this Act, and may be used and exercised for enforcing the provisions of this Act, in as full and effectual a manner as if they were set forth in this Act, and applied and extended by express terms to the subjects and purposes thereof; and all such penalties and forfeitures shall and may be sued for, recovered, and levied in the same manner as by the said recited Acts provided in cases of offences prohibited by the said Acts or any of them.

Interpretation
of Act.

VI. And be it enacted, that this Act and the said recited Acts shall be construed as one Act; and the said recited Acts shall remain in full force and effect, except so far as the provisions of the same are repealed or altered by or are inconsistent with this Act; and the commissioners for the execution of the said Acts shall be commissioners for the execution of this Act; and, save when the nature of the provision or the context shall exclude such construction, words and expressions to which a particular or extended meaning is given in the said recited Acts or any of them shall have or include the same particular or extended meaning in this Act.

Act may be
amended, &c.

VII. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

11 & 12 VICTORIA, CAP. 92.

An Act for the Protection and Improvement of the Salmon, Trout, and other Inland Fisheries of Ireland.
[31st August, 1848.]

WHEREAS an Act was passed in the session of Parliament holden in the fifth and sixth years of the reign of her present Majesty, intituled *An Act to regulate the Irish Fisheries*: and whereas the same was amended by an Act of the seventh and eighth years of the reign of her said Majesty, and further amended by an Act of the eighth and ninth years and by an Act of the ninth and tenth years of her said Majesty: and whereas by reason of the want of co-operation among the several parties exercising the rights of salmon and trout fishing, and the extent of the common or public rights of such fishing on the sea coast and in the estuaries and rivers of Ireland, and the varied and conflicting interests involved therein, measures have not been taken for the due protection of these fisheries, and the enforcement of the law in respect of the same; and it is expedient, with a view to the increase and improvement of the said fisheries, to make provision for more effectually carrying out the provisions of the said Acts; and whereas it is expedient that funds should be provided for defraying the cost of such additional protection, and it is just and right that the same should be levied from the persons for the time being using any engine or device whatsoever for the capture of such fish: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament

5 & 6 Vict. c. 106.
Commissioners of Public Works in Ireland to be commissioners for the purposes of this Act.

assembled, and by the authority of the same, that the Commissioners of Public Works in *Ireland*, as Commissioners of Fisheries, together with the Inspecting Commissioners of Fisheries herein-after mentioned, shall be commissioners for the execution of this Act; and shall for the purposes of this Act and the said recited Acts have and use all the powers, privileges, and authorities vested in the commissioners for the execution of the said Acts; and the said recited Acts and this Act shall be construed together as one Act.

Recited Acts and this Act construed as one Act.

Two existing inspectors of fisheries to be inspecting commissioners.

II. And be it enacted, that from and after the passing of this Act, the two existing inspectors of fisheries appointed under the provisions of the said recited Acts shall be denominated and shall, during the pleasure of the Commissioners of her Majesty's Treasury, be Inspecting Commissioners of Fisheries, and shall be associated with the Commissioners of Public Works in *Ireland* for the time being, and with them be commissioners for the execution of the said recited Acts and this Act; and in the case of any vacancy in the office of the said inspecting commissioners, or either of them, by death, resignation, or dismissal, it shall be lawful for the Commissioners of her Majesty's Treasury from time to time to appoint, during their pleasure, in the room of each such inspecting commissioner so dying, resigning, or being dismissed, another Inspecting Commissioner of Fisheries, who shall be associated with the said Commissioners of Public Works in like manner; and the said Commissioners of her Majesty's Treasury shall be empowered from time to time to fix such salaries for any such inspecting commissioners as they shall think fit; and such Inspecting Commissioners of Fisheries shall and may, for the purposes of the said recited Acts and this Act, have, use, and exercise all and every the like powers and authorities and have like privileges as are by the said recited Acts or any of them vested in or given

to the said Commissioners of Public Works, or any of them, as Commissioners of Fisheries; and all and every the powers and authorities in and by the said recited Acts and this Act given to or vested in the said Commissioners of Public Works, or which under the provisions of this Act may be used by or be vested in such Inspecting Commissioners of Fisheries, may be exercised by the said Commissioners of Public Works, or by such Inspecting Commissioners of Fisheries, or by any one or more of them.

III. And be it enacted, that the said commissioners for the execution of this Act shall, before the end of this present year, or at any time afterwards, as they may find it expedient, divide *Ireland* and the sea coast and islands thereof into districts for the purposes of this Act, and shall cause the said districts to be defined and described by suitable notices and maps to be published for that purpose; and each such district shall be so formed as to embrace one or more river or rivers, or lake or lakes, with the tributaries thereof, which are frequented by salmon, trout, or pollen, or fish of the salmon kind, or eels, together with such portions of the sea coast and islands adjacent thereto as shall be described by such maps; and the said Commissioners shall subdivide each such district into two or more electoral divisions, to be called the upper or fresh water and lower or tidal electoral divisions of such districts, and upon the maps aforesaid the said commissioners shall cause to be delineated the limits and boundaries of such electoral divisions as aforesaid; and it shall be lawful for the said commissioners from time to time, if it shall appear to them expedient or necessary so to do, to alter any such district or electoral division and fix other boundaries for the same, duly publishing and describing the same as herein-before provided.

Commissioners
for executing this
Act to divide
Ireland into
districts for the
purposes of this
Act.

IV. And be it enacted, that for each such district Conservators of

fisheries to be elected for each district.

as aforesaid conservators of fisheries shall be annually elected and appointed as herein-after provided.

Commissioners to prescribe number of conservators to be elected from each electoral division.

V. And be it enacted, that the said commissioners shall be authorized and empowered to determine and declare the number of conservators, not less than three nor more than nine, which shall be elected and returned from each such electoral division to represent the same, and the persons so to be returned for each electoral division shall be the elected conservators of fisheries for the district until the next annual election.

Owners of several fisheries of a certain value to be conservators in like manner as elected conservators.

VI. And be it enacted, that if in any district one or more persons shall possess a several or exclusive fishery or fisheries therein, as owner, lessee, or occupier, valued under the Acts for the more effectual relief of the destitute poor in *Ireland* at one hundred pounds yearly or upwards, he or they shall be entitled to sit with the elected conservators for such district, and shall be deemed *ex officio* a conservator or conservators for the same, so long as he or they shall possess such fishery or fisheries, and shall have a vote in all matters, and shall have all the powers and privileges under this Act which the said elected conservators may individually possess: Provided always, that where a fishery so rated shall be held by several persons as owners, lessees, or occupiers, one person alone shall sit and act as a conservator as aforesaid in respect of such fishery.

Elected conservators to be chosen by the persons paying licence.

VII. And be it enacted, that the elected conservators shall be elected annually by the person who shall have paid licence duty and been licensed within each electoral division of a district in the current year, under the provisions of this Act, in the manner herein-after mentioned.

All engines, nets, &c for salmon and trout fishing,

VIII. And be it enacted, that from and after the first day of *January* one thousand eight hundred and

forty-nine, all engines, nets, instruments, or devices whatsoever used for the taking of salmon, trout, pollen, or fish of the salmon and trout kind, or for the taking of eels, and all fixed salmon, trout, or eel fisheries within any district, or on or off the sea coast thereof, shall, except as herein-after provided, before the same be used in the said year or any subsequent year, be duly licensed and rated in the manner herein-after prescribed, upon payment of the licence duty or rate, as the case may be, herein-after provided.

to be licensed
and pay an annual
duty.

IX. And be it enacted, that every person who shall have paid licence duty under this Act within and for any such electoral division within any year, shall be entitled to vote at the election of the conservators to be chosen for such division held [for such current year either in person or by proxy, according to such regulations and forms for the election as shall be fixed and directed by the commissioners before mentioned, such proxy being a qualified elector, and shall be entitled to have a vote or votes thereat according to the following scale: (that is to say), if the licence duty so paid by such person shall not amount to two pounds, one vote; if the same shall amount to two pounds, and not to five pounds, two votes; and if the same shall amount to five pounds, and not to ten pounds, three votes; and if the same shall exceed ten pounds, four votes.

Persons who have
paid licence duty
entitled to vote
for conservators.

Votes to be cumu-
lative.

X. And be it enacted, that, for the purposes of the first meetings in each and every electoral division under this Act for the election of conservators as aforesaid, the said commissioners shall fix and determine the scale of licence duties and rates to be paid as aforesaid in respect of all engines, nets, instruments or devices whatsoever used for the taking of salmon, trout, pollen, or fish of the salmon or trout kind, and for the taking of eels, and for all fixed salmon, trout, or eel fisheries within each dis-

Commissioners
for purposes of
first elections to
fix and publish
the scale of
licence duties and
rates for each
district.

trict, or on or off the sea coast thereof, and shall give public notice of the same within each electoral division, and such scale of licence duties and rates shall remain in force until the same shall be altered under the provisions of this Act: Provided always, that such licence duties and rates respectively shall not exceed the amount of the respective licence duties and rates specified in the schedule to this Act annexed.

First meetings of persons paying licence duty for the election of conservators to be called by commissioners.

XI. And be it enacted, that the said Commissioners shall appoint the places and times at which all persons who shall have paid the licence duty as herein provided in each electoral division of each district for the year one thousand eight hundred and forty nine shall assemble in the month of *July* in that year, the commissioners giving two weeks notice thereof by hand-bills and advertisements in two or more newspapers circulating in such district; and all persons who shall have paid any such licence duty for such year within such electoral division shall be entitled to vote at such respective meeting, and shall choose a chairman to preside thereat: provided always that it shall be lawful for the said commissioners, or any one or more of them, to attend and preside at any such first meeting, instead of such chairman.

Commissioners may attend and preside.

Persons assembled at such first meetings and at future annual meetings to elect conservators of fisheries for the year.

XII. And be it enacted that the persons so assembled in each electoral division at such first meetings, and at all annual meetings for such elections, and who shall be qualified to vote under this Act, shall have power to elect the appointed number of persons as herein provided to represent them as conservators of fisheries for the ensuing year; and it shall and may be lawful for the chairman as aforesaid, or the said commissioners, as the case may be, to receive the votes of the persons so assembled as aforesaid, and to declare the persons who shall have received the greater number of votes to be the elected

conservators as aforesaid ; and the chairman of such meeting, or the said commissioners, as the case may be, shall certify under his or their hand the election of each conservator, and furnish him with a certificate, which shall be sufficient authority for him to act as such conservator as herein provided, and shall also within four days after such election cause a list of such conservators, with a statement of the residence and post town of each, to be transmitted to the office of the said commissioners ; and the persons so elected for each electoral division of a district shall conjointly form, with any such *ex-officio* conservators as aforesaid, a board of conservators of fisheries for such district, until the formation of a new board in like manner in the ensuing year, and so in like manner in each succeeding year.

XIII. And be it enacted, that after the first board of conservators of fisheries for any district shall have been formed, the board of conservators for each such district shall be and are hereby empowered from time to time, as they shall think fit, to fix and determine, subject to the approval of the commissioners, the amount of licence duty to be paid for each year after the year one thousand eight hundred and forty-nine for every engine, net, instrument, weir, or device, set forth in the schedule to this Act, used for the taking of salmon, trout, pollen or fish of the salmon kind, and for the taking of eels, within each such district, or on or off the sea coast thereof, and for every engine, net, instrument, weir, or device for any such purpose which may be proposed to be used, and which is not enumerated in the said schedule ; and the board of conservators are hereby also empowered to fix and determine, subject to the approval of the commissioners from time to time, the rate *per centum* to be paid for each year after the year one thousand eight hundred and forty-nine, upon the poor law valuation in the cases of fixed and established salmon, trout, or eel fisheries, which

Power to boards of conservators, after the year 1849, to alter and fix, subject to approval of commissioners, the licence duty and rates.

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are designated several fisheries, as herein-before mentioned, within each district, or on or off the sea coast thereof: provided always, that no licence duty or rate to be fixed by the said conservators shall exceed the respective amount of duty specified in the said schedule, or the rate of ten *per centum* on the poor law valuation of established or several fisheries; and that any alteration in the same so to be made shall commence and have effect on and from the first day of *January* in the then succeeding year.

Board of conservators, when constituted, to fix times and places of meetings.

XIV. And be it enacted, that the board of conservators of each district shall from time to time fix and determine and duly publish notice of the times and places for the general meetings of such board, and also the times and places for the then next annual meetings of electors in each electoral division for the election of conservators for the same.

In case of failure of any electoral divisions to elect, the conservators of other divisions shall act for the district.

XV. And be it enacted, that if the persons entitled to meet and elect such representatives or conservators in any one or more electoral division or divisions of a district shall fail or neglect for any year so to do, the representatives or conservators of any other one or more electoral division or divisions of such district for which conservators shall have been elected shall be empowered, nevertheless to act in all matters and things relating to such district under the provisions of this Act.

On failure of election of any conservators, the former board to act.

XVI. And be it enacted, that if no one electoral division in a district shall in any year elect conservators as aforesaid, it shall be lawful for the previously existing board of conservators for such district, to continue to act as, and to all intents and purposes they shall be, conservators for such district for that year.

Quorum of boards of conservators.

XVII. And be it enacted, that, for the purposes

of this Act, at all district meetings of the board of conservators, three of the persons entitled and empowered to act and vote thereat, as herein-before provided, shall form a quorum, and all matters and things shall be determined and decided by the majority of such persons so assembled; and if on any matters upon which a difference may arise the votes shall be equal, the chairman shall in addition to his original vote, be entitled to give a casting vote.

Chairman to have a casting vote.

XVIII. And be it enacted, that it shall and may be lawful for any such board of conservators assembled at a district meeting to fix time and place for holding a general annual meeting, and hold adjourned meetings; and it shall be lawful for any three conservators from time to time to call special meetings, provided that notice of the place and time of each such special meeting, subscribed by three or more conservators, or by the clerk of the board, on their requisition to him, shall be inserted at least twice in some two newspapers circulating in the county or counties in which such district shall be situate, at least ten days before such meeting shall be held, or that the clerk of such board shall, on such requisition as aforesaid, give ten days notice in writing of such meetings to each conservator entitled to act within such district.

How meetings of board of conservators are to be called.

XIX. And be it enacted, that it shall and may be lawful for the board of conservators for each such district, at the annual general meeting or some other meeting specially appointed by them before the first day of *October* in the year one thousand eight hundred and forty-nine, and in each subsequent year, at any time when it may be necessary or expedient, to nominate and appoint a clerk or clerks, with reasonable salary or salaries, as the said board may think necessary, and to appoint some bank to act as treasurer or treasurers of such board, and also to appoint as many inspectors and water bailiffs as may

Board of conservators at the annual meetings to nominate treasurer, clerk, inspectors, and water bailiffs.

be necessary, with reasonable salaries, but only to the extent which the funds at their disposal will admit of, for the protection of the fisheries in the district, and for generally enforcing the fishery laws within the same; provided always, that no elected or other conservator shall be eligible to hold any appointment under this Act from which any salary or emolument shall be derived; and it shall be lawful for the board of conservators from time to time to remove any such clerks, inspectors, or water bailiffs, and to nominate others in their stead.

Conservators may apply funds of district towards providing passes for fish through natural and artificial obstructions.

XX. And be it enacted, that the board of conservators of any district shall be and are hereby empowered to apply from time to time any portion of the funds in the hands of the treasurer to the credit of such district which they may think fit for the purpose of making passes in or over weirs, or removing or making passes in or over natural obstructions in any river in such district, subject to the sanction of the said commissioners, under the provisions of the said recited Act of the fifth and sixth years of her Majesty's reign; and upon obtaining the sanction of the said commissioners it shall be lawful for the said board of conservators to place to the credit of the said commissioners such sum of money as shall have been for that purpose approved and sanctioned by them, and it shall be lawful for the said commissioners thereupon, as they shall think fit, to construct such works and make such alterations in the bed of any river as shall effectually secure a free and uninterrupted passage for fish, or to direct and cause such alterations to be made in any weir, dam, or dyke erected in or across any river frequented by salmon, for affording a free and uninterrupted passage for fish, pursuant to the powers and provisions of the said recited Act of the fifth and six years of her Majesty's reign.

For engines, nets,

XXI. And be it enacted, that for any engine,

instrument, net, weir, or device whatsoever not enumerated in the schedule to this Act, and which may be proposed to be used for fishing for salmon, trout, pollen, or fish of the salmon or trout kind, or for eels, it shall be lawful for the said commissioners at any time before a board of conservators shall be formed, and after the formation of such board it shall be lawful for such board of conservators for the district, as the case may be, to fix and determine the licence duty on payment of which the same may be used in such district, regard being had, as far as practicable, to the relative capability of capture and productiveness of the same, as compared with those set forth in the said schedule, and the relative proportion of the duties therein set forth: Provided always, that the party proposing to use any such engine, instrument, net, weir or device not enumerated in such schedule shall previously give notice to some constabulary or coast guard officer of the district, or to some inspector appointed under this Act, of his intention to use the same, who shall and is hereby required to forward to the said commissioners or the said conservators, as the case may be, a description thereof, as to its relative capability of capture as compared with the engines, instruments, nets, weirs, or devices set forth in the said schedule, and shall furnish the name by which it shall be designated, upon which the commissioners or the said conservators, as the case may be, may authorize the use of the same, upon payment of the licence duty which they may fix, and cause the same to be inserted in the schedule of licences, for the said district: Provided always, that rods used singly for taking trout, perch, pike, or other fish, save and except salmon, shall not be subject to any licence duty under this Act: Provided also, that if any person using a rod shall, under pretence or otherwise of fishing for trout, perch, pike, or other fish, take or kill salmon with such rod, such person shall be subject to a penalty of the like amount as the licence duty for the time

etc., not enumerated in Schedule, licences, before the formation of boards, to be fixed by commissioners, afterwards by the board of conservators.

Saving as to rods not used for salmon.

being payable for a salmon rod, and the same shall be recoverable before a justice or justices in like manner as other penalties under the said recited Acts or this Act: Provided also, that all cross lines used with a rod or rods for taking fish of any kind whatsoever shall be subject to the licence duty payable under this Act for the time being upon cross lines and rods, until the same shall be altered as herein provided.

Penalty on using engines, nets, &c. without licence.

XXII. And be it enacted, that if any person shall use or erect any engine, net, instrument, or device whatsoever, subjected to licence duty as aforesaid for the taking of salmon, trout, pollen, or fish of the salmon or trout kind, or eels, or by any means fish within any fixed salmon, trout, or eel fishery in any year, without the same respectively being duly licensed for such year under the provisions of this Act, every such engine, net, instrument, and devices and such means of fishing, shall be forfeited and sold, or otherwise disposed of, as the justice or justices shall deem fit, and the entire proceeds thereof shall be added to the general funds of the district constituted under this Act in which the same shall be erected or used: and any person erecting or using the same shall be liable to pay such penalty, not less than half nor exceeding the whole of the licence duty at which under this Act the engine, net, instrument, or device, he shall have been so using or erecting would for the time being be subject to under this Act, as such justice or justices shall think fit; such forfeitures and penalties to be proceeded for and recovered under the warrant of such justice or justices in the manner and subject to the regulations in the said recited Act of the fifth and sixth years of her present Majesty's reign provided as to the recovery of forfeitures and penalties thereunder.

Forfeitures to be applied to the funds of the district.

Recovery of forfeitures and penalties.

All several fisheries to be sub-

XXIII. And be it enacted, that in all cases of fixed and established salmon, trout, or eel fisheries

which under the provisions of the said first recited Act are designated "several fisheries," or are now or may hereafter be claimed or possessed or used as several fisheries, whether the same be fished by means of weirs extending entirely or partly across rivers or estuaries, with boxes, baskets, or cruives, or be fished by means of existing natural or artificial obstruction stopping the fish, or by draft, pole, loop, or other nets, or by rod and line, or by any other means or device whatsoever, the persons using, occupying, or holding such fisheries, whether such occupation and holding shall be by lease, demise, agreement, or tenancy at will, or in fee simple, fee tail, or for life, shall in each year pay as an annual rate, in two equal half-yearly gales, on the first day of *February* and the first day of *July*, in every year after the passing of this Act, such sum in addition to the licence duty by this Act provided to be paid for the engines, instruments, nets, or devices erected or used in fishing such fishery, as shall be equal to the amount of the difference between the sums paid by such respective persons for such licence duty or duties as aforesaid, and the annual sum of ten *per centum* upon the poor law valuation of such fishery, subject to such alteration of such per-centage as may from time to time be made by the board of conservators of the district under the provisions of this Act.

XXIV. And be it enacted, that any such last-mentioned rate may be recovered in a summary way before any one or more Justice or Justices of the Peace, in like manner as wages, or by civil bill before the assistant barrister of the respective county, or by action in the superior courts, at the suit of the said commissioners, if no board of conservators of the district shall have been formed, or if such board shall have been formed, then at the suit of the clerk of the said board of conservators, as the case may be.

jeot to an annual
rate according to
valuation.

Last-mentioned
rate recoverable
before justices as
wages, or by civil
bill, or by action

Valuation of such fisheries.

XXV. And be it enacted, that in any cases where any such fisheries as last aforesaid may not be or have not been valued by the persons appointed as valutors for the purposes of the poor laws in force in *Ireland*, the said commissioners, on the application of the board of conservators, may and are hereby empowered to call upon the Poor Law Commissioners of *Ireland* to cause the same to be valued separately and distinctly from other property for the purposes of this Act.

Collection of such annual rate.

XXVI. And be it enacted, that such last-mentioned rate shall be collected by such persons as the said commissioners for the execution of this Act, at any time before the formation of a board of conservators for the district, or after the formation of such board, then as the said board, as the case may be, shall from time to time appoint, adequate security being taken by the said commissioners or the said conservators, as the case may be, from the persons authorized to receive the same for the duly accounting for the same and for the due performance of the duties which the said commissioners or the said conservators, as the case may be, may prescribe for them, and the cost of any allowance to be made for the collection of the same shall be charged to the expenses of the district for which the same shall be collected.

All monies received for licences, rates, penalties, &c., in each district to be lodged in the bank, and applied to defray the expenses of such district under this Act.

XXVII. And be it enacted, that the total amount of all sums of money received for all licence duties and rates, and from the sale of forfeited engines, nets, or instruments as aforesaid, and from penalties (save so much as shall be paid to any informer as herein-after mentioned) under the provisions of this Act, shall, until the appointment of a treasurer for each respective district as herein provided, be lodged in the Bank of *Ireland*, to the credit of the said commissioners, in the matter of the district for which the same shall have been received, and shall

be applied to the purposes of such respective district as herein provided; and regular accounts of the receipts and disbursements on account of each district shall be kept and furnished by the said commissioners, until the appointment of such treasurer as aforesaid; and upon the appointment of a treasurer of each district respectively as herein provided, the commissioners shall cause the monies lodged in the Bank of *Ireland* in the matter of such respective district to be transferred and lodged with all accounts relating to such district to and with the respective treasurer of such district, and thenceforth all sums of money received for licence duties and rates, and for forfeitures and penalties, for each such district, shall be paid over by the parties receiving the same to and received by such treasurer of such district, and be applied to the purposes of such district under the provisions of this Act; and such treasurer shall pay such sums of money as shall be required for the purposes of the district from time to time upon a draft or order signed by the chairman at any general meeting of the board of conservators and by two other conservators.

XXVIII. And be it enacted, that all licences under this Act shall be prepared and printed in such form as the said commissioners shall prescribe or from time to time think necessary to adopt; and a separate licence shall be issued for each separate engine, net, instrument, or device for taking fish, and each licence issued before the formation of a board of conservators for the district shall be stamped with the seal of the said commissioners, and if issued after the formation of such board shall be stamped with the seal of such board, which seal shall be provided for such purpose: Provided always, that the year for which such licence shall issue, and a name, number, or letter describing the district and the electoral division for the purposes of this Act in which the licence shall be used, and the name of the en-

Form of licences,
&c.

gine, net, instrument, or device for which the same shall be issued, shall be printed thereon in clear and legible characters; and such licence shall be only good and valid for the year, district, and purpose for which the same shall be issued, and for no other; and that any party using or presenting the same for any other year, district, or purpose, or in any manner altering or fraudulently counterfeiting the same, shall be liable to a penalty, not less than the whole amount of the licence duty for which the same shall have been issued, or which the party so mis-using or counterfeiting the same would be liable to under this Act, and not exceeding double the amount of the same, at the discretion of such justice or justices before whom the offence may be tried.

Penalty for mis-using or counterfeiting the same.

Penalty on persons using or having engines, nets &c., not producing licence when required.

XXIX. And be it enacted, that any person using any such engine, net, instrument, or device as aforesaid, or having the same erected or in fishing order, or found with the same in his possession in or near any fishing place, or going to or returning from fishing, shall and is hereby required to produce to any of the said commissioners or any officer of the said commissioners, or any conservator of the district, or any inspector, water bailiff, or officers, or men of the navy, coast guard, or constabulary, when demanded, the licence for the same, under and subject to like penalties (in case of failure) as in the last preceding provision mentioned: Provided always, that such parties as shall to the satisfaction of the justices or justice be proved to have them in possession as manufacturers or sellers of the same, and not for the purposes of using the same within the year in which such demand shall be made of them respectively, shall be exempt from any such penalty.

Parties having them for sale, &c. exempt from penalty.

Licences how sold.

XXX. And be it enacted, that such licences as aforesaid under this Act shall be publicly sold either

by licensed stamp distributors, or by such persons and in such and so many places throughout each district, as the said commissioners before the formation of a board of conservators for the district, or after the formation of such board, then as such board of conservators, as the case may be, shall from time to time appoint, adequate security being taken by the said commissioners or the said board of conservators, as the case may be, from the persons authorized to sell the same, for duly accounting for the same and for the due performance of their duty; and the cost for any allowance to be made for the sale of the same shall be charged to the expenses of the district for which the same shall be issued: Provided always, that if any person shall have paid a licence duty for a rod within any district as aforesaid, such person shall not be liable to pay an additional sum for a licence in any other district by reason only of angling with a rod in any other district.

XXXI. And be it enacted, that all persons who-
soever demanding to purchase any such licences,
and tendering to any person so appointed to distri-
bute the same the amount of licence duty for the
time being to be paid under the provisions of this
Act, shall be entitled to receive the same without
any question or objection whatsoever arising either
from the time when, the purpose for which, or the
right in virtue of which he or they may desire to
use such licence, or on any other grounds whatso-
ever: Provided always, that nothing herein con-
tained with reference to the possession of any such
licence, or the payment of the licence duty or rates
under this Act, shall be construed to give or confer
any right of fishing or of using any instrument or
device for taking fish by any means or in any place
which the party having or using such licence would
not have possessed if this Act had not been passed,
or to alter or affect the rights of any other persons.

Licences to be
sold to all persons
demanding to
purchase, but
such licences not
to confer rights
not otherwise pos-
sessed; but not
to alter rights of
parties.

Account of sales
of licences to be
furnished.

XXXII. And be it enacted, that all persons whom the commissioners, or board of conservators, as the case may be, shall appoint to sell licences as aforesaid, shall furnish to the said commissioners or board of conservators, as the case may be, an account of such sales monthly, or so often as they may require, and shall set forth in such accounts the sums received for licences for each particular engine, net, instrument, or device, the names and residences of the persons who shall have purchased such licences as aforesaid, and the district and electoral division of such district for which such licences shall have been obtained.

Security to be
given by the
clerk of the con-
servators, and du-
ties to be per-
formed by him
and other offi-
cers.

XXXIII. And be it enacted, that the board of conservators of each district shall take sufficient security from any clerk whom they may appoint, and any other officer or person having the care or custody of money to be received by virtue of this Act, for the due execution of the duties of his respective office, or for duly accounting for such money, as the said board of conservators shall think proper; and such clerks shall attend the stated and other meetings of the said board, and shall, in a proper book or books to be provided for that purpose, enter and keep a true account of all the monies to be received by virtue of this Act, and of the applications of the same, and of all the acts, proceedings, and transactions of the said board, by virtue of and under the authority of this Act, and shall perform such other duties as the said board may direct; and every conservator shall and may at all convenient times have access to and peruse and inspect the same, and each such board are hereby empowered and required to cause their said clerk to furnish to the said commissioners annually, or as often as they may require, an account of all monies received and disbursed relating to each such district under the authority of the board of conservators.

XXXIV. And be it enacted, that such inspectors and water bailiffs as shall be appointed under the provisions of this Act shall have, for the enforcement of the said recited Acts and this Act, the powers of constables, and all the powers and authorities conferred on water bailiffs, or officers or men of the constabulary force or coast guard, or navy, under the said recited Acts, or any of them.

Powers of inspectors and water bailiffs.

XXXV. And be it enacted, that all fines, penalties, and forfeitures under this Act not herein-before provided for shall be recoverable in like manner and subject to like provisions as penalties and forfeitures under the provisions of the said first-recited Act, and one moiety of every sum of money levied as a fine or penalty for any offence under the provisions of the said recited Acts or this Act (save and except penalties for nonpayment of any such licence duty as aforesaid) shall be paid to the informer or person who shall be the means of bringing to justice any person offending against any of such provisions, and the other moiety shall (anything in the said recited Acts to the contrary notwithstanding) be applied to the purposes of this Act for the district formed under this Act in which such offence shall have been committed.

How fines and penalties under recited Acts and this Act to be recovered and applied.

XXXVI. And be it enacted, that the appointment of officers under this Act shall not be subject or liable to the payment of any stamp duty.

Appointment of officers not subject to stamp duty.

XXXVII. Provided always, and be it enacted, that nothing in this Act contained shall be construed to lessen or abridge the powers conferred by the said recited Acts on the said commissioners, or on any inspectors, water bailiffs, officers, and men of the navy, coast guard, or constabulary, but the same shall remain and be in full force and effect for the purposes of the said Acts, and for aiding the officers, inspectors, and water bailiffs to be appointed under

Nothing herein to abridge the powers of the commissioners and officers under recited Acts.

this Act for enforcing the provisions of the said Acts and this Act.

Commissioners
may attend and
advise at meet-
ings of conserva-
tors.

XXXVIII. And be it enacted, that the said commissioners shall be empowered to attend any meeting of any board of conservators held under the provisions of this Act, and to advise, consult, and confer with them upon the regulation, management, and improvement of the fisheries, and shall and may at all convenient times have access to and peruse, when they shall think fit, the books and accounts kept for the purposes of any district under this Act.

Defining powers
of commissioners
to alter close sea-
sons.

XXXIX. And whereas by the said recited Act of the fifth and sixth years of her Majesty's reign the said commissioners are empowered, in manner in the said Act directed, to decide that the period in the said Act appointed for the close time of the fisheries therein mentioned respectively should cease, and that such other period as should then be fixed upon by them as the close time for any of such fisheries should be kept and observed in lieu thereof, or to alter, as therein mentioned, the period within which it should not be lawful to hang any coghil, or other nets in the gaps, eyes, or sluices of eel or other weirs, or make use of fixed engines for taking eels, subject to the provisions in the said Act contained : And whereas by the said Act of the ninth and tenth years of her Majesty's reign so much of the said first-recited Act as specified the close time or close season in which no fish of the salmon kind should be taken is repealed, and new periods for the close time as to fish of the salmon kind are by the said Act prescribed and substituted : and whereas doubts may be entertained whether the powers of the said commissioners to alter the close time or close season as to such fish of the salmon kind as aforesaid, under the provisions of the said first-recited Act, are still subsisting and unaffected by the provisions of the said Act of the ninth and tenth years of her

Majesty's reign ; and for the removal of such doubts, be it enacted, that, notwithstanding anything in the last-mentioned Act contained, all the powers and authorities vested in the said commissioners under the said first recited Act relating to the altering the close time or close season for any such fisheries in the said Act mentioned, and also for altering any close time or close season for any estuary or portion of the sea coast, or for any tideways, or for any river or lake above the tideway or portion thereof where the tide ebbs and flows, prescribed and established by the said Act of the ninth and tenth years of her Majesty's reign, shall be and remain in full force and effect, and may be used and exercised as to any of such close seasons in like manner and subject to like provisions as directed and contained in the said first-recited Act of the seventh and eighth years of her Majesty's reign : provided always, that in case the said commissioners shall decide upon altering any of such close seasons as aforesaid, such change or alteration shall commence and take effect at the expiration of six weeks from the date of the publication of the said decision in the *Dublin Gazette*, anything in the said first-recited Act to the contrary notwithstanding.

In case commissioners alter close seasons, notice to be given of the same.

XL. And whereas by the said recited Act of the ninth and tenth years of her Majesty's reign certain periods are fixed as the close times or close seasons during which fish of the salmon kind shall not be killed, destroyed, or taken, and amongst other things, it is provided that (save as thereafter mentioned, and save in the counties of *Antrim, Tyrone, Donegal, Londonderry, Mayo, Fermanagh, Leitrim, and Sligo*.) no fish of the salmon kind shall be killed, destroyed, or taken by any person, or by any means whatsoever in or from any part of any river or lake above the tideway, or portion thereof where the tide ebbs and flows, at any time between the fifteenth day of *September* in each year and the last

Alteration of close season in certain rivers above tideways

day of *February* in the year following, both the said days inclusive; provided always that in any such part of any river or lake above the tideway, or portion thereof where the tide ebbs or flows, no fish of the salmon kind shall be killed, destroyed, or taken between the first and fourteenth days of the month of *September*, both the said days inclusive, by any person by means of any weir, crib, cruive, box, trap, draw net, haul net, fixed net, or other net or device whatsoever, save by rods and lines only: and whereas by means of the said provisions the open time for fishing with rods and lines in the portions of the rivers and lakes above the tideways is shorter by fourteen days than the open time for fishing in any estuary or on the sea coast, or in the tideway of any river or lake: and whereas it is expedient and equitable to equalize the periods of open time for fishing with rods and lines: be it therefore enacted, that from and after the passing of this Act, as regards all parts of *Ireland* and the sea coast thereof (save the said eight counties and the sea coast thereof hereinbefore mentioned), the close time during which it shall not be lawful to kill, destroy, or take fish of the salmon kind, in or from any part of any river or lake above the tideway with rods and lines only, shall be between the twenty-ninth day of *September* in each year and the last day of *February* in the year following, both the said days inclusive, unless and until such close time shall be altered by the said commissioners under the provisions of the said recited Acts and this Act as herein-before mentioned.

Penalty for killing or taking fish in or from several fisheries.

XLI. And be it enacted, that if any person or persons not being authorized by the owner, lessee, or occupier of a several fishery as defined under the first recited Act shall enter into or upon such several fishery for the purpose or under the pretence of killing fish therein or taking fish therefrom, or shall kill fish therein or take fish therefrom, he or they

shall for every such offence forfeit and pay a sum not less than ten shillings nor more than five pounds, the same to be recoverable in a summary way before a justice or justices, as provided by the said first recited Act of the fifth and sixth years of her Majesty's reign.

XLII. And whereas by the said recited Act of the fifth and sixth years of her present Majesty's reign, in the section of the said Act numbered thirty-six in the copies thereof printed by the Queen's printers, it is provided, that the several persons who shall commit any of the offences in the said section mentioned shall forfeit and pay any sums not exceeding the several and respective sums in the said section mentioned: and whereas it is expedient that a minimum penalty should be specified in each such case: be it therefore enacted, that any person who shall commit any of the of the offences in the said section of the said Act specified shall (in addition to any other forfeiture thereby specified) forfeit and pay a sum not exceeding the sum for such offence, respectively specified in the said section of the said Act, and not less in any case than the sum of ten shillings: provided always, that nothing in this Act contained shall be construed to legalize any fishery or weir not being legal at the time of the passing of this Act.

Minimum of penalties in certain cases.

XLIII. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

Act may be amended, &c.

SCHEDULE to which the foregoing Act refers.

SCALE OF LICENCE DUTIES for each engine, net, instrument, or device used in salmon, trout, pollen, or eel fisheries in districts.

	£	s.	d.
1. Single salmon rods	1	0	0
2. Cross lines and rods	2	0	0
3. Snap nets	1	10	0
4. Draft nets or seines	3	0	0
5. Drift nets.	3	0	0
6. Trammel nets, or draft nets for pollen	1	10	0
7. Pole nets	2	0	0
8. Other nets, or similar engines not named above	{ Licence duties such as shall be fixed by com- missioners or conservators as provided by this Act.		
9. Bag nets			
10. Fly nets			
11. Stake nets, or stake weirs (Scotch)			
12. Head weir			
13. For every box, crib, cruive, or drum net in any weir for taking salmon or trout	5	0	0
14. For every gap, eye, or basket in any weir for taking eels	1	0	0

Note.—Fixed fisheries for salmon or eels claimed to be “several fisheries,” whether fixed by means of fixed weirs with boxes, cruives, or rails for stopping the fish, or by means of the fish being stopped by rocks, or other natural or artificial obstructions, and taken by means of draft or other nets

{ to be rated at
ten per cent.
on poor law
valuation, un-
less such per-
centage be re-
duced by the
commission-
ers or by the
conservators
as provided by
this Act.

13 & 14 VICTORIA, CAP. 88.

An Act to amend the Law relating to Engines used in the Rivers and on the Sea Coasts of *Ireland* for the taking of Fish.

[14th *August*, 1850.]

WHEREAS it is expedient to amend and explain the several Acts relating to engines used in the fisheries of *Ireland*: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act the several interpretation clauses in the said recited Acts contained shall be and are hereby repealed; and that in the construction and for the purposes of the said recited Acts and of this Act, unless there be something in the subject or context repugnant to such construction, the words "person," owner," and "proprietor" shall mean and include any body corporate, aggregate, or sole, as well as an individual, and also any company or partnership; and any word importing the singular number only shall mean and include several persons or parties as well as one person or party, and several things as well as one thing respectively, and the converse; and any word importing the masculine gender only shall mean and include a female as well as a male; and the word "lands" shall mean and include all messuages, lands, tenements, and hereditaments; and the word "waste" shall include and extend to any and to all uncultivated or unprofitable lands; and the word "county" shall include and extend to a county of

Construction of
terms of recited
Acts and of this
Act.

any city or town; and the words "estuary" and "bay" shall include and extend to any harbour or roadstead; and the word "rivers" shall include and extend to tributaries of rivers, and to all other streams and watercourses: and the word "vessel" shall mean and include any ship, boat, cot, cobble, or curragh; and the word "fish" shall extend to and include oysters and oyster brood; and the word "salmon" shall extend to and include grilse, peall, sea trout, samlets, par, and all other fish of the salmon kind, and the spawn and fry thereof; and the word "trout" shall extend to and include pollen or fresh-water herring, and all fish of the trout kind, and the spawn and fry thereof; and the word "net" shall mean and include all descriptions of tackle, trawl, trammel, stake, bag, coghill, eel, haul draft, and seine nets, and all other engines or devices, of whatsoever construction or materials, or howsoever known or styled, which shall be used for the like purposes as those in this Act or in the said recited Acts referred to; and the words "fixed net" or "fixed engine" shall extend to and include weirs, stake, bag, stop, and still nets, and all other engines or devices used for the like purposes, of whatsoever construction or materials the same may be, or however known or styled, and whether fixed to the soil or held by hand, or made stationary in any other way; and the words "close time" or "close season" shall mean and include any time or season within which it is or shall be prohibited to fish for, take, or destroy any salmon, trout, oysters, or any fish of any of the kinds in this Act or in the said recited Acts referred to, or the brood, spawn, or fry thereof; and the word "fisheries" shall mean and include all fisheries, whether several or public; and the words "several fisheries" shall mean and include all fisheries lawfully possessed and enjoyed as such under any title whatsoever, being a good and valid title at law, exclusively of the public, by any person or persons, whether in navigable waters or in

waters not navigable, and whether the soil covered by such waters be vested in such person or persons, or in any other person or persons; and the words "owner" or "proprietor" shall mean and include every person who shall be in the actual possession or use and enjoyment, or receipt of the rents or profits, of any lands or fisheries (as the case may be), save that in every case in which any person shall be in possession or receipt of the rents or profits of any fisheries or lands under any sequestration, extent, elegit, or other writ of execution, or as a receiver under any order of a court of equity, the person against whom such writ shall have issued, or who but for such order would have been in possession, shall, jointly with the person in possession by virtue of such writ or order, be deemed for the purposes of this Act to be the owner of such fisheries or lands; and the words "judge of assize" shall, as to cases arising or to be determined in the county of *Dublin* or county of the city of *Dublin*, mean and include a judge of any of the law courts of record in *Dublin* at Nisi Prius at the first sittings after the pronouncing or making of any order or decision appealed from or complained of, or if such first sittings shall commence within twenty-one days after the pronouncing or making such order or decision, then at the sittings next immediately after such first sittings.

II. And be it enacted, that where any person shall be the owner of any lands, and also the owner of or interested in some question as to any fisheries adjoining to such lands, or carried on or exercised upon the same, such person for the purposes of this Act or the said recited Acts may act and be dealt with in both or either of the several characters so borne by him as aforesaid.

In case of lands and fisheries vested in one person, how he may act.

III. And be it enacted, that wherever the owner of any lands or fisheries to which the provisions of

In case the owner is underlegal

disability, who to act. this Act or the said recited Acts are intended to apply, or any person interested in any question as to any fisheries, shall be a minor, idiot, lunatic, feme covert, beyond the seas, or under any other legal disability, the guardian, trustee, committee of the estate, or husband of such person or owner, or his or her attorney or agent respectively, and whom they are hereby empowered to nominate under their hand and seal, shall for the purposes of this Act and the said recited Acts be substituted in the place of such owner or person so interested.

Acts may be done by agents duly authorized.

IV. And be it enacted, that it shall be lawful for any land owner or fishery owner, by a power of attorney given in writing under his hand, to appoint an agent to act for him in carrying into execution the provisions of this Act or the said recited Acts; and all things which by this Act or the said recited Acts are directed to be done by or with relation to any person may be lawfully done by or with relation to the agent so duly authorized of such person; and every such agent may be dealt with in all respects as such person himself might have been dealt with under this Act or the said recited Acts, and every such agent shall have full power, in the name and on behalf of his principal, to take part in or act upon any inquiry, or prosecute, oppose, or defend any complaint, appeal, action, writ, suit, or other proceeding, or attend, vote at, and take part in any meeting, or do or suffer any other act for the purposes of this Act or the said recited Acts; and every person shall be bound by the acts of any such agent, according to the authority committed to him, as fully as if the principal of such agent had so acted, and the power of attorney under which the agent shall have acted shall be produced, inspected, or registered, and copies or extracts thereof made, at such times and places and in such manner as the commissioners appointed for the execution of the

"I A. B. of [Ac.] do hereby appoint C. D. of [Ac.] to be my lawful attorney to act for me in all respects as if I myself were present and acting; and I make this appointment under and by virtue of an Act passed in the _____ year of her present Majesty, intituled [*here insert the title of this Act*].
(Signed) A. B.

Conservators empowered at general meetings to depute conservators for electoral divisions to act for such electoral divisions.

the purposes of the district from time to time, upon a draft signed by the chairman at any general meeting of the board of conservators, and by two other conservators; and whereas by reason of the large extent of some of the districts formed under the provisions of the said Act it is expedient, for the better administration thereof, to make further provisions; be it therefore enacted, that it shall and may be lawful for the conservators of fisheries assembled at any general meeting for any district under the provisions of the said Act, if they shall think fit so to do, to make an order under their hands and seals authorizing the conservators of any electoral division or divisions to hold meetings within the division or divisions for which they may have been elected, and to appoint a bank to be treasurer, and to appoint a clerk, inspector, and water bailiffs to act for such division or divisions, with reasonable salaries: provided always, that the fixing and duly publishing notice of the times and places for the meetings of conservators in such electoral divisions, and the appointment of a bank to act as treasurer, and the appointments of clerks, inspectors, and water bailiffs, as herein provided, pursuant to such order, shall be subject to the same provisions and regulations as are provided and required by the said recited Act to be observed and done by boards of conservators assembled at general district meetings, with respect to the premises; and that after any such order shall have been made the holding of such meetings and such appointments shall be good and valid in law, and it shall and may be lawful for the conservators assembled at any general district meeting as aforesaid to apply and appropriate any portion of the money received for licence duties and rates, and for forfeitures and penalties, for any district, as they shall consider expedient, to and for the purposes of any such electoral division or divisions, and cause the same to be lodged to the credit of the conservators for such electoral division or di-

visions in the bank which such conservators shall as herein provided appoint to act as treasurer, and such treasurer shall pay such sums of money as shall be required for the purposes of such electoral division or divisions, from time to time, upon a draft or order signed by the chairman at any meeting of such conservators for such electoral division or divisions, and by two other such conservators; provided always that such conservators acting for any electoral division or divisions as herein provided shall furnish such accounts of the disbursements of such money as may be lodged to their credit in the manner aforesaid as the conservators for any district making such order as aforesaid shall from time to time require.

VI. And whereas the commissioners appointed under the said recited Acts respectively for the execution of the same, have, for the purpose of regulating the use of certain engines, and generally for the purposes of the said recited Acts, made sundry divisions and subdivisions of fishery districts, and have duly published the same respectively, and boards of conservators have been elected for such districts respectively, which said divisions and subdivisions respectively it may be desirable to revise and alter from time to time for the purposes of the said recited Act and of this Act: be it therefore enacted, that the said commissioners for the execution of the said recited Acts may for the purposes aforesaid, upon the written application of and signed by at least one third part in number of the board of conservators for any fishery district, whether now subsisting or which may have been altered, subdivided, united, or made by the said commissioners under the authority of this Act, alter or subdivide such district or any electoral division thereof, and may fix other boundaries for the same, or unite any two or more electoral divisions of one district, or make any new or additional or substituted electoral divi-

Existing fishery districts, &c. may be altered from time to time by the commissioners.

sion in any district, and to determine the number of conservators to be elected for each such electoral division : provided always, that every such alteration or subdivision, union, or addition, or substitution shall be duly published and described, with the boundaries of the same, in such manner as is in and by an Act passed in the twelfth year of her present Majesty, intituled *An Act for the Protection and Improvement of the Salmon, Trout, and other Inland Fisheries of Ireland*, required to be done in the case of divisions and subdivisions of fishery districts made under that Act.

11 & 12 Vict. , c. 92.

All fisheries rated under Poor Law Valuation to pay the same rate, in addition to licence duty, as several fisheries.

VII. And whereas by the said recited Act of the twelfth year of the Queen it is provided, that in the case of certain fixed and established fisheries which are designated several fisheries the same are liable, in addition to the licence duty provided by the said Act to be paid for the engines used in fishing such fishery, to such sum as an annual rate as shall be equal to the amount of the difference between the sums paid by such respective persons for such licence duty or duties as aforesaid and the annual sum of ten *per cent.* upon the poor law valuation of such fishery, subject to such alteration of such per-centage as may from time to time be made by the board of conservators of the district under the provisions of the said Act : and whereas it is expedient that the said liability should be extended to all productive fisheries which may be rated for the relief of the poor at any time : be it therefore enacted, that all salmon, trout, and eel fisheries whatsoever so rated for the relief of the poor, whether possessed as several fisheries, as so designated in an Act of the sixth year of her present Majesty's reign, intituled *An Act to regulate the Irish Fisheries*, or this Act, or otherwise, shall be liable to the same annual sum or rate as aforesaid on the poor law valuation as those fisheries designated several fisheries : provided always, that such rating shall not confer a

5 & 6 Vict. c. 103

right or title to any such fisheries as several fisheries, or any other right or title which the persons possessing them would not have possessed if this Act had not passed: provided also, that such rate shall be recoverable in like manner as the same rate on several fisheries.

VIII. And be it enacted, that where any monies shall be received by the treasurer of any district in respect of licence duties or rates for the period or term in which the then next election of conservators is to take place, such monies shall, until such election, be carefully retained by such treasurer, and shall after such election be paid over by him to or to the order of the new board of conservators, to be applied by them according to the provisions of the said recited Acts and of this Act.

District funds to be applied by the conservators elected for the year.

IX. And be it enacted, that any party who shall conceive himself or any other person to be unduly or unequally or insufficiently charged by any such board of conservators with any licence duty as aforesaid, may present his appeal therefrom, either to the assistant barrister for the district or to the going judges of assizes at the then or then next assizes holden for the county or jurisdiction wherein his fishery district is situate; and such assistant barrister or judges, as the case may be, shall hear and examine into such appeal, and adjudicate thereon, and such their adjudication shall be final: provided always, that until and unless any charge shall be reduced or disallowed by such assistant barrister or judges (as the case may be), the party charged shall be deemed liable to the full amount of licence duty wherewith he shall have so been charged: provided also, that if such charge shall be so reduced or disallowed as aforesaid, such reduction or disallowance (as the case may be) shall relate back

Appeal against amount of licence duty.

to the time of making such charge, and shall operate either by way of further charge or of discharge in full, or *pro tanto*, as the case may be; and if it shall operate by way of discharge as aforesaid, and the party so discharged shall have theretofore actually paid the amount of such charge, he shall immediately upon such adjudication be entitled to recover back from the said board of conservators for such district the full amount of such charge, or (as the case may be) the excess beyond or over the true amount of such charge, in conformity with the said adjudication: provided always, that due notice of the party's intention to present such appeal shall be by him served upon the said board of conservators within ten days after the making of such charge: provided always, that no such appeal shall lie in respect of any licence duties specified in the schedule annexed to the said Act of the twelfth year of her present Majesty.

Provisions in
case of vacancies
in the Board of
Conservators

X. And be it enacted, that in case any conservator shall die, or become incapable to act, during the period for which he is elected, the other conservators elected for the same district, (notwithstanding such his death or incapacity, and whether any person shall or not be elected in his room,) shall immediately summon another general meeting of the persons in his electoral division so entitled to meet as in the said Act of the twelfth year of her present Majesty is mentioned, for the purpose of electing a conservator in his room, and such meeting shall be so summoned and held as is therein provided with respect to the annual general meetings, and the person elected at such meeting shall be and continue and act as a conservator for such electoral division and district during the residue of the said period: provided nevertheless, that in the meantime and until such new election the said other conservators shall act for such district in all respects as they

might have done but for such death or incapacity.

XI. And be it enacted, that no elected or other conservator, being also a justice of the peace for the county or counties or other jurisdiction within which his district or electoral division is situate, shall be thereby disqualified to sit and adjudicate as such justice of the peace, or at any quarter or petty sessions within the same, upon any complaint made or prosecution instituted by or on the behalf of the board of conservators of which he is such member, in respect of any offence against this Act or the said recited Acts: provided always, that no elected or other conservator shall be qualified, so long as he holds such office, to receive or hold any office or appointment under this Act to which any salary, allowance, or remuneration is incident.

Justices of the peace being conservators not disqualified from sitting at the trial of offences against this Act.

XII. And be it enacted, that any persons using or erecting any engine, net, instrument, or device whatsoever, without being duly licensed under the provisions of the before-recited Act of the twelfth year of her Majesty, or this Act, shall be liable to pay such penalty, not less than double nor more than treble the licence duty which the engine, net, instrument, or device he shall have been so using or erecting would for the time being be subject to under the said Act or this Act, in addition to the forfeiture of the engine so used, anything in the said recited Act to the contrary notwithstanding.

Penalty for fishing without licence increased.

XIII. And whereas it is enacted by the before-recited Act of the twelfth year of her present Majesty's reign, intituled *An Act for the Protection and Improvement of the Salmon, Trout, and other Inland Fisheries of Ireland*, that for the several districts, as fixed by the commissioners, conservators shall be annually elected and appointed as therein provided; and it is expedient that such elections should not

Elections of conservators to be triennial instead of annual.
11 & 12 Vict. c. 92.

too frequently take place: be it therefore enacted, that after the passing of this Act all conservators appointed at the next elections for conservators, and at all future elections, shall continue to hold office for three years from the time of their elections anything in the said Act to the contrary notwithstanding: provided always, that if any board of conservators shall neglect to give notice and appoint times and places for holding meetings for elections, it shall be lawful for the said commissioners to appoint such times and places for such purpose; and in such cases the election of conservators shall be as good and valid in law as if the meeting had been called by the conservators.

Commissioners
may adjudicate on
complaints of
illegal fishing,
and order weirs
to be abated.

9 & 10 Vict. c. 114.

XIV. And be it enacted, that when any party complaining of the erecting, maintaining, or of using any weir, fixed net, or engine, shall exhibit to the said commissioners his complaint in that behalf in writing signed by him, and setting forth such particulars of his said complaint as are in the like case required by an Act passed in the ninth year of the reign of her present Majesty, intituled *An Act for the further amendment of an Act passed in the sixth years of her present Majesty, for regulating the Irish fisheries*, the said commissioners shall thereupon summon before them the party or parties (if he or they can be found) erecting, maintaining, or using such weir, fixed net or engine, or if he or they are absent or dead, or under incapacity, then the occupier or occupiers (if any) of the land whereon the same is so erected, or the owner or owners of such land, if the same shall not be occupied, to attend at some convenient place within the county or jurisdiction in which or on the shore or boundary of which any such weir, fixed net or engine, or any part thereof, may be so erected, constructed, maintained, or used; and the said commissioners shall accordingly, at the time and place mentioned in any such summons, upon proof of the personal service of such summons,

or upon proof of such summons having been left at or on board the vessel or at or posted on the known residence of the party or parties so summoned, proceed to hear all such pertinent evidence as may be adduced before them, whether at the instance of them the said commissioners, or on behalf of the party (if any) making such complaint, or on behalf of the party or parties summoned; and if, after hearing all such evidence, the said commissioners shall so think fit and right, it shall be lawful for the said commissioners (whether the party or parties so summoned shall have appeared or not at such hearing) to make an order or decision in writing under their hands and seals, declaring that such weir, fixed net or engine, or any part thereof, is a nuisance, and shall be abated and removed; and the said commissioners shall thereupon, by warrant under their hands and seals, direct or authorize some proper person to abate and remove such weir, fixed net or engine, or part thereof, at the expence of the party or parties summoned, or such of them as shall appear to the said commissioners to have erected, constructed, maintained, or used the same, or suffered such erection, construction, maintenance, or user, or any of them, and thereupon the same shall be abated and removed accordingly; and, subject to the appeal herein-after provided for, it shall be lawful for the said commissioners to order and direct that the materials of any such weir, fixed net or engine, or any part thereof, be forfeited and sold, and the produce arising from such sale applied in such manner as is in the said recited Acts provided in cases of illegal nets used or legal nets illegally used for fishing.

XV. Provided always, and be it enacted, that if any person whether complainant or defendant shall think himself aggrieved by any such order or decision of the said commissioners, such person may appeal to the next going Judges of Assize at the Assizes to be held for the county, county of the city or town,

Appeals from
such adjudica-
tions.

in which or on the shore or boundary of which any such weir, fixed net or engine, shall have been so erected, constructed, maintained, or used, provided such assizes shall be held at any time not less than thirty-one days after the time the said commissioners shall have made any such order or decision: and in case such assizes shall be held within thirty-one days from the time of such order or decision, such appeal shall be made to the assizes to be held in and for such county, county of a city or town, next after such first assizes; and that no such appeal shall be allowed, received, heard, or determined unless the party appealing shall, within twenty-one days from the date of such order or decision, give notice in writing to the said commissioners of his intention to try such appeal, and decide whether the party against whom such complaint was made had a right to erect, construct, maintain, or use such weir, fixed net or engine, or any part thereof, or suffer such erection, construction, maintenance, or user, at the time or in the place where the same may have been so erected, constructed, maintained, or used: Provided always, that in case of such appeal being made against any order or decision for the abatement or removal of any such weir, fixed net or engine, or part thereof, as aforesaid, and notice given as aforesaid, the materials of such weir, fixed net or engine, or part thereof, as the case may be, shall be deposited in the custody of such officer or men of coast guard or constabulary, or with such other party or person as the said commissioners may direct or appoint for the purpose, there to remain and be kept until the matter of such appeal shall be decided as aforesaid, or until the time for prosecuting the same shall have expired; and if such decision shall be in favour of the appellant, such materials shall thereupon be returned and the amount of his expenses (if any) incident to such abatement, removal, and desposit as aforesaid respectively repaid to such appellant.

XVI. And be it enacted, that no person or persons, other than the person or persons entitled to exercise such right as in the said recited Acts or this Act mentioned, shall place, erect, maintain, or use any weir, fixed net, or other contrivance for placing or erecting nets or taking of fish on any parts of the coast of Ireland or on the bank or shore of any river or estuary wherein the tide ebbs and flows, or in the sea or tideway adjoining such coast, bank or shore; and that if any person or persons other than the person or persons so entitled as aforesaid, shall place, erect, maintain, or use any weir, fixed net, or other such contrivance as aforesaid, contrary to this Act he or they, being thereof convicted, shall for every such offence forfeit and pay a sum not exceeding ten pounds nor less than one pound, together with the further penalty of ten shillings for every fish taken or destroyed by him or them by means of such weir, fixed net, or contrivance; and the said weir, fixed net or contrivance shall also be forfeited and ordered to be abated or removed at the expense of such offenders or offender, by the commissioners, or (as the case may be) by the magistrate before whom such conviction shall be had, and the materials thereof shall be disposed of in such manner as is by the said recited Acts or any of them directed with respect to illegal nets used or legal nets illegally used for fishing.

Penalties for erecting or using weirs contrary to this Act.

XVII. And be it enacted, that if, after any order or decision of any judge of assize heretofore made for abating or removing any weir, fixed net or engine, or any part thereof, or after any order or decision of any court whatsoever, which shall at any time hereafter be made, for abating or removing any weir, fixed net or engine, or any part thereof, unless and until the same shall be reversed on appeal, any person shall erect, re-erect, use, or fish with any weir, fixed net or engine, or any part thereof, in or adjoining or contiguous to any place where it may have been

Penalties for erecting or re-erecting weirs after conviction.

or shall be decided by any such court that any such weir, fixed net or engine, or any part thereof, should be abated and removed, or if any person shall erect, re-erect, use, or fish with any weir, fixed net, or engine, or any part thereof, contrary to law, and after conviction of any person for erecting, using, or fishing with any weir, fixed net or engine, or any part thereof, in the same place, or in, adjoining, or contiguous to the same place, or for erecting, using, or fishing with any weir, fixed net or engine, or any part thereof, of the same description or used for the same purposes, then and in every such case the said commissioners, or any two justices of the peace for the county or other jurisdiction wherein the said weir, fixed net or contrivance, or any part thereof, shall have been so erected or re-erected, or used or fished with, shall, by warrant under their hand and seal, from time to time, and so often as any such weir, fixed net or engine, or any part thereof, as aforesaid, shall be so erected, re-erected, used, or fished with, abate and remove the same, at the expense of the party or parties erecting, re-erecting, using, or fishing with the same, or of the owners or occupiers of the soil whereon such weir, fixed net or engine, or any part thereof shall be so erected, re-erected, used, or fished with, (if such owners or occupiers shall appear to have permitted or suffered such erection, re-erection, use, or fishing,) and further that the materials of every such weir, fixed net or engine, or such part thereof as aforesaid, shall be forfeited and sold or otherwise disposed of as the said commissioners or justices shall direct; and that the said party or parties and owner shall (independently of all other forfeitures and penalties to which under this Act or the said recited Acts he or they may be liable) forfeit and pay for every such offence any sum not less than twenty pounds, and also any sum not exceeding ten pounds nor less than two pounds for every day during which such weir, fixed net or engine, or such part thereof, shall continue to be

so erected, re-erected, used, or fished with as aforesaid; and that the produce of such sale and all such forfeitures and penalties respectively shall be disposed of and applied in such manner as is in and by the said recited Acts directed in regard of illegal nets or nets illegally used for fishing.

XVIII. Provided always, and be it enacted, that where any such order or decision of any such court as aforesaid hath been or shall hereafter be made for abating or removing any weir, fixed net or engine, or any part thereof, merely by reason of its having been erected, used, or fished with on the soil and without the permission of the person being or claiming to be the lawful owner thereof, and for no other reason, such person shall not be thereby estopped or prevented from afterwards erecting, re-erecting, using, or fishing with (subject, nevertheless, to the other provisions of this Act and the said recited Acts) any such weir, fixed net or engine, or any part thereof, as aforesaid, or any other weir, fixed net or engine, or any part thereof, in or adjoining or contiguous to the place wherein it may have been or shall be decided by such court as aforesaid that the said first-named weir, fixed net or engine, or such part thereof, as aforesaid, should be abated and removed: Provided also, that nothing herein contained shall be construed to give to or confer upon any such person so being or claiming as aforesaid any new or better title to the said soil, or any new or better right to erect, use, or fish with any weir, fixed net or engine, or any part thereof, in or adjoining to or contiguous to such place as aforesaid but that he shall in other respects remain and be subject to the provisions of the said recited Acts and of this Act in that behalf set forth.

Not to prevent, in certain cases, the erection of weirs in or adjoining to the place from which weirs had been abated and removed by order of court.

XIX. And be it enacted, that nothing in the said recited Acts or this Act contained shall take away or in any manner lessen or impair the powers of

Nothing to affect or impair jurisdiction of Admiralty and other courts.

her Majesty's High Court of Admiralty, or any other court or jurisdiction, in relation to the removal or abatement of nuisances accruing or occasioned to navigation, fishery, or the passage of fish, by the placing or maintaining or using of weirs, fixed nets, or other contrivances.

Metes and bounds not necessary to be set out on records.

XX. And be it enacted, that in any action or prosecution for or in respect of any of the trespasses or nuisances aforesaid it shall not be necessary to set forth in the declaration or indictment the metes or bounds of the place in which the trespass or nuisance complained of has been committed, and that it shall be sufficient to state generally that the same was committed within the district in which the fishery in question shall happen to be situate.

Further powers for defining mouths of rivers.

XXI. And whereas provisions have been made by the said recited Acts for defining the mouths of rivers "at their entrance into the sea;" and for the better protection and regulation of the fisheries it may in many cases be expedient to prohibit the use of nets within certain distances of the mouths of tributary rivers at their entrance into other rivers, estuaries, roadsteads, or bays: be it therefore enacted, that it shall and may be lawful for the said commissioners to define the mouths of such rivers, where they shall think fit so to do, subject to the provisions of the said recited Acts; and when the mouth of any such river shall have been defined as herein provided, the same regulations with respect to using, placing or erecting nets shall be observed, and may be enforced in like manner as provided by the said recited Acts and this Act, and any person offending shall suffer the same forfeitures and penalties as therein provided.

Penalties for neglect to make or maintain the statutory free

XXII. And be it enacted, that from and after the passing of this Act, if any person entitled to or possessed of the fishing of any river or branch thereof, or any weir, dam, or dyke for the taking

of fish, and not being by prescription or other legal title exempted from the obligation of having, making, or maintaining any free gap or Queen's share therein, shall omit or neglect to have, make, or maintain such free gap or Queen's share of the dimensions or in the place or to construct it in the manner now by law required, or shall reduce the width of any existing free gap or Queen's share, or substitute a free gap or Queen's share, of less width in lieu thereof, the said commissioners may cause such alterations to be made, and recover the expenses thereof against such person, and the person so offending shall also forfeit and pay a sum not exceeding fifty pounds nor less than ten pounds, and shall also for every fish taken by means of such weir, dam, or dyke, so long as such free gap or Queen's share shall not be left, made, or maintained of the dimensions or in the place or shall not be constructed in the manner now by law required, or shall be reduced in width, or shall remain of less width than that in lieu of which it is substituted, forfeit and pay the sum of ten shillings, and shall also, for every day during which such free gap or Queen's share shall not be left, made, or maintained of the dimensions or in the place or shall not be constructed in the manner now by law required, or shall be reduced in width, or shall remain of less width than that in lieu of which it is substituted, forfeit and pay a sum not exceeding ten pounds nor less than five pounds, and such expenses and forfeitures shall be recovered in like manner as is hereinafter provided with respect to penalties for offences against the said recited Acts and this Act: provided always that the person who is lawfully entitled to or lawfully possessed of any weir, dam, or dyke, and who shall be not liable or compellable at law to have, make, widen, or maintain, or to cause to be left, made, widened, or maintained, a free gap or Queen's share therein, shall not be liable to any penalty for not leaving, making, widening,

or maintaining (as the case may be,) such free gap or Queen's share, until his claim (if any) for compensation for the loss or damage he may sustain by leaving, making, widening, or maintaining such free gap or Queen's share be settled and disposed of, and the amount of compensation (if any) paid, tendered, or lodged, according to the provisions hereinafter contained.

Commissioners may require owners of weirs in certain cases to make gaps therein, and furnish a claim for compensation.

XXIII. And be it enacted, that where the owner of any such weir, dam, or dyke as aforesaid is not liable or compellable at law to leave, make, widen, or maintain, or to cause to be left, made, widened, or maintained, any such free gap or Queen's share in such weir, dam, or dyke as aforesaid, it shall nevertheless be lawful for the said commissioners, upon the application of any person or persons who is or are interested in the fisheries in or lands adjoining to the river in which any such weir, dam, or dyke shall be situate, or who is or are licensed to fish or fishing within the district or districts whereunto such river belongs, and who shall deposit or secure, to the satisfaction of the said commissioners, the amount of the cost of all proceedings necessary to be taken under the provisions herein contained (if the said commissioners shall require such deposit or security), to serve a notice on the owner, and also the lessee or occupier, if any, of such weir, or at his or their known place of abode, and thereby to require the owner of such weir, dam, or dyke to make, widen or open a free gap or Queen's share therein of such construction and dimensions as the said commissioners shall deem fit and shall name in such notice, not varying from the construction nor exceeding the dimensions specified in an Act passed in the sixth year of her present Majesty, intituled *An Act to regulate the Irish Fisheries*, and to furnish his claim for compensation, or his objections, if any, to making, widening, or opening such free gap or Queen's share, within a

5 & 6 Vict. c. 100.

time to be specified in such notice, not less than thirty days from the service thereof on the owner, lessee, or occupier of such weir.

XXIV. And be it enacted, that every owner of any such weir, dam, or dyke, or of any share, estate, or interest therein, may accept and receive as satisfaction and recompense for the value of any injury or damage that shall be sustained on account of making, widening, or opening such free gap or Queen's share, or in anywise relating thereto, such sum of money in respect thereof as shall be agreed upon between him respectively and the said commissioners; and in case the said commissioners and the said party interested in such weir, dam, or dyke, or sustaining such injury or damage, cannot or do not agree as to the amount or value of such satisfaction, recompence, or compensation, the same respectively shall be ascertained and settled in manner hereinafter directed.

Satisfaction may be made and accepted.

XXV. And be it enacted, that if any such owner of such weir, dam, or dyke as aforesaid shall neglect or refuse to treat or shall not agree with the said commissioners, or by reason of absence or disability cannot agree, or cannot be found or known, or shall not prove to the satisfaction of the said commissioners a clear title to receive such recompence or compensation as aforesaid, or in case any such owner of a weir, dam, or dyke, wherein such gap is to be made, widened, or opened as aforesaid shall not accept such satisfaction or recompence for the same as shall be offered by the said commissioners, for the space of thirty days after the notice in writing, given to the known agent or attorney of such owner as aforesaid, or left at his place of abode, or at the house of the lessee of such weir wherein such gap is intended to be made, widened, or opened as aforesaid, or in case the parties interested in the fisheries in or lands adjoining the river in which such weir, dam, or dyke

Commissioners empowered to assess the value in case of dispute.

shall be situate, or fishing within the district or districts whereunto such river belongs, shall not agree with the owner of such weir, dam, or dyke, or shall not subscribe and deposit the amount which the said commissioners may agree upon with the said owner of such weir, dam, or dyke as the amount of compensation to be paid for making, widening, or opening such free gap or Queen's share, or shall not agree upon the proportions in which such amount of compensation is to be paid by the said several parties respectively, then in every such case the said commissioners are hereby empowered, at a time and place to be specified in a notice to be served as aforesaid, and published once in the *Dublin Gazette*, and once in each week for three successive weeks in a newspaper circulating in the county or counties in which such weir, dam, or dyke shall be situate, and through or by which such river shall flow, to inquire and examine and assess and award the sum of money to be paid for such recompence or compensation as aforesaid, and ascertain and settle in what proportions the parties interested in the fisheries in or the lands adjoining such rivers, or fishing within the district or districts whereunto such river belongs, should contribute to pay the sum so awarded, and the said commissioners shall award such recompence so to be assessed; and the said commissioners shall in such award name or describe the persons (if known to the said commissioners) to whom respectively the sum mentioned therein shall be paid, and in what proportions the same shall be paid to and among such persons where more than one, and the weir, naming or describing the same, in respect of which such sum has been so awarded, and the position and breadth of such free gap or Queen's share, and the names or other descriptions of the parties who are to contribute the amount awarded for such recompence or compensation as aforesaid, and the proportion to be contributed by each respectively; and the said

commissioners shall notify and appoint a time and place for holding a meeting for the confirmation of their said award, and shall attend at such time and place, and at such meeting, or at some adjournment thereof, proceed to consider each case and hear all objections which may be made thereto by any person whatsoever, and receive all such evidence as they shall find pertinent and proper, and amend or confirm and settle each such award accordingly; and such award shall be conclusive and binding upon the Queen's most excellent Majesty and all other persons interested, except in the case and subject to the provisions herein-after contained: Provided always, that the person who shall under the provision before mentioned contribute in respect of lands to such compensation shall be the owner in fee simple or fee tail, or for a lease of lives renewable for ever, or for life with remainder to his issue, or for ever, or for a term of which not less than one hundred years are unexpired, and from whom the fishery or right of fishing shall not have been reserved.

XXVI. And be it enacted, that if the owner or other person claiming compensation on account of such making, widening, or opening of the free gap or Queen's share in such weir, dam, or dyke, or any person liable to pay such compensation as aforesaid, shall be dissatisfied with the award of the said commissioners, it shall be lawful for the person so dissatisfied to appeal to the judges of assize, or one of them, at the assizes which shall be held next after any such award shall have been made and settled as aforesaid for the county wherein such weir, dam, or dyke shall be wholly or in part situate (provided the same shall not be held sooner than thirty-one days after the making of such award,) the party appealing, if there be sufficient time after the making of such award, having first given to the said commissioners twenty-one days notice at least of his intention of bringing such appeal, and of the

Any person dissatisfied with the adjudication of the commissioners may appeal to a judge at the assizes.

matter thereof; and if there shall not be thirty-one days between the making of such award and the day appointed for holding such assizes, then such appeal may be tried at the assizes which shall be holden for such county next after the expiration of thirty-one days from the making such award, and the like notice thereof shall be given; and any judge at such assizes, or any adjournment thereof, upon due proof of such notice having been given, is hereby empowered and required to hear and finally determine the matter of such appeal, in such and the same manner as he is at present empowered to do in cases of appeal from decrees on civil bills made by assistant-barristers at Quarter Sessions in *Ireland*: provided always, that if such dam, weir, or dyke shall be situate in more than one county or between two or more counties, such appeal shall be tried at the assizes to be held in the county the assize town of which shall be nearest to such weir, dam, or dyke; and provided also, that if no notice of appeal shall be served on the said commissioners within twenty-one days next after their award shall be made the same shall be final, binding, and conclusive upon all persons and to all intents and purposes whatsoever.

If no appeal
within twenty-
one days award
to be final.

Judgments to be
final.

XXVII. And be it enacted, that in all such cases of appeal as aforesaid the said judges of assize, or one of them, shall give judgment in respect to the matter of such appeal, and such judgment shall be final, binding, and conclusive to all intents and purposes against all parties, corporations, and persons.

Awards and
judgments to be
recorded.

XXVIII. And be it enacted, that such of the aforesaid awards of the said commissioners as shall not be appealed from, and the judgments so given as aforesaid, shall be respectively transmitted to and be kept by the respective clerks of the peace of the counties in which the land in respect of which such awards or judgments shall have been respectively made shall be situate, and shall be deposited with

the records, and deemed records of such counties respectively, to all intents and purposes, and the same, or certified copies thereof, shall be allowed to be good evidence in all courts whatsoever, and all persons shall have liberty to inspect the same, paying for such inspection the sum of sixpence, or to have copies thereof, paying for every copy the sum of three halfpence for every seventy-two words, and so in proportion for any greater or less number of words.

XXIX. And be it enacted, that upon award or judgment being so made and transmitted as aforesaid the said commissioners shall cause a final notice to be served on the proprietor, lessee, or occupier of such weir, dam, or dyke, and a copy thereof to be published once in the *Dublin Gazette*, and once in each week for three successive weeks in some one or more newspapers circulating in the county or counties in which such weir, dam, or dyke shall be situate, stating that all the requisites of this Act in respect to the making such award or judgment had been fully complied with, and calling upon all parties liable under such award or judgment to pay to the said commissioners, within a time to be specified in such notice, not less than three months from the date thereof, the sums of money which such parties thereby became liable to pay; and the publication of such notice shall be deemed final and conclusive evidence that the several preliminary measures herein-before required to be taken and observed in respect to such award or judgment had been duly taken and observed; and from and after the publication of such notice all the parties liable under such award or judgment shall be bound to contribute the sum awarded, assessed, or ascertained, in the proportions fixed by such award or judgment, and within the time specified in such notice.

How the award
or judgment
shall be enforced.

XXX. And be it enacted, that if any portion of the money so to be contributed shall remain unpaid to the said commissioners after the expiration of

If not paid it may
be sued for.

the time specified in such notice as last aforesaid, then it shall be lawful for the said commissioners to recover the same from the parties liable thereto under the said award or judgment who shall make default in the payment thereof, or the lawful representatives of such parties, by civil bill, or by action or suit in any of the superior courts in *Dublin* : provided always, that where any party so making default, or his lawful representatives, shall be insolvent, or absent beyond seas, or unable to be found, the conservators of the district or districts through or by which such river shall flow shall, notwithstanding anything contained in this Act or the said recited Acts to the contrary, apply from time to time any portion of the funds in the hands of the treasurers to the credit of such district or districts, for the purposes of making good any deficiency of money so to be contributed which shall have been occasioned by such default, together with full costs and expenses, and either in one sum or by instalments, as the said commissioners shall appoint.

Compensation to be paid over, when received, and the alterations in the weir, &c. to be made as directed by the 5 & 6 Vict. c. 106.

XXXI. And be it enacted, that upon receipt of the money so agreed, awarded, or adjudged to be paid as satisfaction or recompence for enlarging or opening such free gap or Queen's share in such weir, dam, or dyke, under the provisions hereinbefore contained, the said commissioners shall forthwith pay the same to such persons or in such manner as is provided and directed by the said Act of the sixth year of her Majesty, in regard of monies agreed, awarded, or adjudged to be paid as satisfaction or recompence for enlarging or opening a free gap or Queen's share under the provisions of the said last-mentioned Act; and thereupon the said commissioners shall take such proceedings for the purpose of causing the required alterations in such weir, dam, or dyke to be made and completed, and the objectionable parts thereof to be removed, as they are by the said Act of the sixth year of her

said Majesty empowered to take in the cases specified in or arising under the said Act for the like purposes.

XXXII. Provided always, and be it enacted, that nothing herein-before contained respecting the making or maintaining such free gap or Queen's share shall be construed to extend to weirs, banks, or heads used for the sustaining the supply of water to mills, factories, or navigation, if such weirs, banks, or heads shall not be made use of for the purpose of taking salmon or other fish in any manner whatsoever.

XXXIII. And be it enacted, that in all cases where the said commissioners shall, by virtue of the provisions in this Act contained, open or cause to be opened, in any weir, dam, or dyke, a gap of the dimensions prescribed by this Act, or remove any obstructions hereby declared to be illegal, it shall not be necessary for the said commissioners, or any person executing their orders, to rebuild any part of such weir, dam, or dyke, or of the works appertaining thereto, nor to fix up or erect altered or improved boxes, rails, or cruives, nor shall they be answerable or accountable for any damage or injury arising to such weir, dam, or dyke, or to such box, rail, or cruive, in consequence of such removal as aforesaid.

XXXIV. And be it enacted, that every proprietor, lessee, or other person who shall be engaged in fishing for salmon by means of nets of any kind or description, shall remove and carry away, or cause to be removed or carried away, from any strand, or from the banks of any river, or from the vicinity thereof, during the yearly close season, all such nets; and in case any such person shall omit or neglect to remove or carry away, or cause to be removed or carried away, such nets as aforesaid, he

Savings for mill weirs.

Commissioners not bound to do more than open the passages required by this Act, and not liable for consequential damages

Removal of nets from the banks of rivers during close seasons.

shall forfeit all such nets, and shall forfeit and pay a sum not exceeding ten pounds nor less than two pounds.

Having in possession part of a salmon or trout, liable to penalty.

XXXV. And whereas persons having in their possession or exposing for sale a salmon or trout in the close season are now by law liable to certain penalties and forfeitures in certain cases: be it enacted, that any person in whose possession any part or portion of a salmon or trout shall be found or exposed for sale during the close season shall be in the like cases subject to the like penalties and forfeitures as are provided by the said recited Acts or any of them; and all persons empowered to enforce the provisions of the said recited Acts and this Act shall be and are hereby empowered to seize all such salmon or trout, or any such portion thereof as aforesaid, when so found in the possession of any person or exposed for sale during the close season.

Penalty for poisoning rivers for the purpose of taking fish.

XXXVI. And whereas great destruction to fish and the spawn and fry thereof is in some places occasioned by placing matters poisonous to fish in rivers for the purpose of capturing them; and whereas the laws at present in force have proved insufficient to suppress this destructive practice: be it therefore enacted, that any person found on the bank of or near any river with any deleterious matter in his possession, under such circumstances as shall satisfy the court before whom he may be tried that such person had employed or was about to employ such deleterious matter for the capture or destruction of fish, the said court is hereby empowered to inflict on such person a penalty not less than five pounds nor more than ten pounds for every such offence: and any person found taking fish from any river or lake, where it shall be proved to the satisfaction of any justice or justices that such fish have been wilfully poisoned, shall be subject to

a penalty of not less than ten shillings nor more than five pounds.

XXXVII. And whereas in many rivers fish are impeded in their passage up and down by means of weirs used for supplying water to mills or factories or for navigation: be it therefore enacted, that it shall not be lawful to use any net, instrument, or device for taking fish (save and except rods and lines only) within two hundred yards of any such weir, either above or below the same; and if any person shall offend against this provision he shall forfeit and pay a sum not less than two pounds nor more than ten pounds for every such offence, and shall also forfeit such net, instrument, or device; provided always, that where such right has been exercised in any such place by any person or persons lawfully possessed of a several fishery therein for twenty years next before the passing of this Act, he shall not be subject to the penalty herein-before provided.

Nets and other engines not to be used within certain distances of weirs.

XXXVIII. And be it enacted, that it shall not be lawful to take salmon or trout in any crib, box, cruive, eye, sluice, or gap, in any salmon, eel, or other weirs, whether the same be set in the tideway or in the fresh water portion of any river, between the low water next in point of time before six o'clock on *Saturday* night and the low water next in point of time before six o'clock on *Monday* morning, if the weir be in the tideway, nor between six o'clock on *Saturday* evening and six o'clock on *Monday* morning, if the weir be in the fresh-water portion of any river; and in case any question or doubt should arise as to whether any such weir is in the tideway or in the fresh-water portion of the river, it shall be competent to the commissioners, on application to them, to determine, by certificate under their hands and seals, whether such weirs should be subject to the aforesaid regulation relat-

Boxes, cribs, &c. in the tideway during weekly close time to be subject to regulations of 5 & 6 Vict. c. 106, upon the certificate of the commissioners.

ing to the tideway, or to the aforesaid regulations relating to the fresh water, as to the said close time; and a copy of such certificate shall be lodged with the clerk of the peace for the county or counties in which such weirs shall be situate, and an attested copy thereof, certified by such clerk of the peace, shall be received as evidence of the determination so made by the said commissioners; and any person offending against the said regulations respectively shall be subject to the forfeitures and penalties provided by the said recited Act or this Act for breaches of the law in respect to the weekly close time or close season.

Mill sluices to be opened or shut as by law required at all times when mills are out of use, subject to a penalty.

5 & 6 Vict. c. 106.

XXXIX. And be it enacted, that the waste sluices, waste gates, or overfalls of the weirs of any mill or factory deriving their supply from rivers frequented by salmon shall, at all seasons of the year when and during the time such mills or factories shall not be used for milling purposes, be kept open, if no passage for fish be provided; and when such passage for fish shall be provided, then the sluices which admit the water to such mills or factories, and the waste sluices, waste gates, or overfalls, shall be kept down or shut, to force the water through such passage for fish, as provided by the said Act of the sixth year of her present Majesty's reign, intituled *An Act to regulate the Irish fisheries*; and if the owners of any such mill or factory not used for milling purposes as aforesaid shall omit to keep any such sluice or sluices, waste gates, or overfalls shut as aforesaid, or open as aforesaid, as required in the respective cases aforesaid, he shall forfeit and pay a sum not less than two pounds nor more than ten pounds for every such offence: Provided always, that the opening or shutting of such sluices, waste gates, or overfalls shall not in any way injuriously interfere with the machinery or water power of any mill or factory whatsoever.

XL. And be it enacted, that it shall not be lawful, in any fresh-water river or lake, at any season of the year, to use for the purpose of taking fish any otter, lyster, spear, strokehaul, dree draw, or gaff, (except when the latter implement may be used solely as auxiliary to angling with rod and line, or for the purpose of removing fish from any legal weir or box by the owner or occupier thereof,) and if any person shall offend against this provision he shall upon conviction thereof forfeit and pay any sum not exceeding ten pounds nor less than four pounds, and shall also forfeit such implement and the materials thereof: Provided always, that nothing herein contained shall be construed to extend to eel spears. Otters, spears, gaffs, &c prohibited.

XLI. And be it enacted, that it shall and may be lawful for the owner or occupier of any land bordering on the sea or any estuary, with the permission in writing of the said commissioners, or for any person or persons, with the consent of such owner or occupier, and with the permission in writing of the said commissioners, to form or plant any oyster bed or laying on the shore adjacent to such lands, and either above or below the level of the lowest water marks of spring tides, as the said commissioners shall think fit; and it shall be lawful for the several persons forming or planting any such oyster bed or laying to hold the same as private property, and to exercise an exclusive control over the same, and such oyster beds shall be entitled to the like protection as by the said recited Acts is provided in case of any other oyster beds or layings being the exclusive property of any person: Provided always, that the forming and planting of such oyster beds as aforesaid shall not give any exclusive right or title to the occupancy of the said shore, except for the purpose aforesaid, or to the appropriation of any public banks or beds at present resorted to for oysters, but that the rights herein-before granted Power to make oyster beds.

and conferred are to be considered as exclusively applying to places where no such public oyster beds at present exist; saving to the Queen's most excellent Majesty and all the subjects of this realm the free and full exercise and enjoyment of all other rights of fishing or other rights whatsoever in or along the said shore, subject to the provisions herein contained.

Penalty for stealing oysters or oyster brood.

XLII. And be it enacted, that if any person shall steal any oysters or oyster brood from any oyster bed or laying, being the exclusive property of any other person or persons, and sufficiently marked out and known as such, every such offender shall be deemed guilty of larceny, and being convicted thereof shall be punished accordingly, unless it shall appear that the party taking such oysters, or accused of stealing the same, acted under a fair and reasonable supposition that either he himself, or any other person in whose right or by whose authority he acted, or the public at large, had a right to take the said oysters, and to convert the same to his or their own use.

Further regulations as to stake nets, &c.

XLIII. And be it enacted, that stake weirs, stake nets, and other fixed nets, in the sea or tidalways, shall be so placed and erected, maintained and used, as that clear openings for the free passage of fish as in the said recited Acts provided can be made in the pouches and traps thereof; and if any person shall offend by placing, erecting, maintaining, or using any weir, net, leader, engine, or work in any manner hereby prohibited, or neglect to construct the same in the mode required by the provisions contained in the said Acts, he shall for every such offence forfeit a sum not exceeding ten pounds nor less than one pound.

Nets for taking salmon not to be used at the

XLIV. And be it enacted, that it shall not be lawful for any person, save and except the owner of

a several fishery within the limits thereof, at any time to shoot, draw, or use any net for taking salmon at the mouth of any river, where the breadth of such mouth between the banks thereof shall not exceed a quarter of a mile statute measure; and that it shall not be lawful for any person, save such owner as aforesaid, within such limits as aforesaid, to shoot, draw, or use any net for taking salmon within half a mile seaward, or half a mile inwards, or along the coast from the mouth of any river, such mouth to be defined, ascertained, and mapped, in case of dispute, by the said commissioners; and that it shall not be lawful for any person, save and except the owner of a several fishery in the whole of a river and its tributaries, within the limits of such several fishery, to shoot, draw, stretch, or use nets at the mouth or any other part of any river in such wise as, in the judgment of the commissioners, to be injurious or detrimental to the free passage of fish, and which they shall have prohibited by some byelaw duly published as the law directs; and if any person shall offend by shooting, drawing, stretching, or using any net in any place or manner hereby prohibited, he shall for every such offence forfeit a sum not exceeding ten pounds nor less than one pound, and also the further penalty of five shillings for every fish taken by means of such net in such place and manner so prohibited as aforesaid; and such net shall also be forfeited.

mouths of narrow rivers, nor to be stretched across the mouths or any other parts of rivers.

XLV. And be it enacted, that no person shall kill, take, or destroy, in any lakes or rivers, any trout, between the twenty-ninth day of *September* in any year and the last day of *February* in the year following, nor shall any fixed crib, cruive, box, or other device, nor any haul, draw, or other net of any description, for the catching of such trout, be used in any lake or river frequented by salmon, between the first and twenty-ninth day of *September* in any year, or at such periods as may be or may have

Close season for trout fishing.

been fixed for certain lakes and rivers by the said commissioners in respect of salmon fishing, under the powers in the said recited Acts contained.

Penalties for not opening or removing cribs, &c., in weekly close times.

XLVI. And be it enacted, that any person occupying or using any crib, box, cruive, stake, flood, ebb, or head weir, stake, bag, or other fixed net, basket, or other engines for catching fish, and failing to remove or open the same as required by the said Act of the sixth year of her Majesty, and any person using any means, device, or contrivance to prevent the free passage through such box, cruive, or engine, or in any way or by any means wilfully frightening or scaring, or attempting to frighten or scare, any salmon or other fish from passing through such box, crib, cruive, pouch, trap eye, sluice, gap, or other engine, or taking therein any salmon between six of the clock on *Saturday* evening and six of the clock on *Monday* morning, or between the low waters next in point of time to those periods respectively, as the case may be, shall for every such offence forfeit and pay a sum not less than ten pounds and not exceeding fifty pounds: Provided always, that nothing herein contained shall be construed to render liable to any penalty any person who shall be able satisfactorily to prove that he was prevented by floods, storm, or stress of weather from removing such leaders or making such openings as aforesaid, during the continuance of such prevention, but no longer.

Offences committed in rivers, &c., forming boundaries of two districts of Petty Sessions may be tried before justice of either district.

XLVII. And whereas it is enacted in the before-recited Act of the sixth year of her present Majesty, that where any of the offences mentioned in that Act shall be committed in or upon any lakes, rivers, or streams forming the boundaries or mearing lines between any two counties, districts of quarter sessions, or districts of petty sessions, such offence shall and may be prosecuted before any Justice or Justices of the Peace in either of such counties or dis-

tricts, and may be alleged and stated to have been committed therein; and doubts have arisen as to the meaning of the said clause: Be it enacted, that where any of the offences mentioned in this or any of the said recited Acts shall be committed in or upon any lakes, rivers, or streams, forming the boundaries or mearing lines between any two districts of Petty Sessions, such offence shall be prosecuted before any Justice or Justices of the Peace in either of such districts and in no other, and may be alleged and stated to have been committed therein, anything in the said Acts to the contrary notwithstanding.

XLVIII. And be it enacted, that wheresoever, Recovery of expenses. under the provisions of this Act or the said recited Acts, any Justice or Justices of the Peace or the said commissioners or conservators are authorized or empowered or required to execute any work, or remove or alter any weir or other erection, or to do any matter or thing, at the expense of any offender, such justice or justices, or commissioners or conservators, as the case may be, shall ascertain the amount of such expenses, and direct payment thereof to be made by such offender to such person as he or they may think fit, and it shall be lawful for such person to sue for and recover the same by civil bill or by action or suit in any of the superior courts in *Dublin*; and a certificate in writing under the hand or hands of such justice or justices, or commissioners or conservators, as the case may be, shall be conclusive evidence of the amount of such expenses, and of the liability of the party therein named to pay the same, and of the right of the person thereby authorized to sue for and recover the same.

XLIX. And be it enacted, that all penalties directed to be enforced against any person or persons The mode in which penalties are to be levied. offending contrary to the provisions of this Act or

Form of conviction.

Which said conviction and adjudication shall be good and valid in law to all intents and purposes, and shall not be quashed, set aside, or adjudged

void or insufficient for want of form only, and shall not be liable to be removed by certiorari or otherwise into her Majesty's Court of Queen's Bench, or any other of her Majesty's courts of record at *Dublin*, but shall be deemed and taken to be final to all intents and purposes whatsoever, unless the same shall be reversed on appeal as herein-after provided: Provided always, that no person shall be convicted of any offence committed against the provisions of this Act unless the prosecution for the same shall be commenced within six calendar months from the time of the commission of such offence.

LI. And be it enacted, that in all cases where any person has any right of appeal against any judgment, order, proceeding, or conviction for placing, erecting, maintaining, or using any fixed net, weir, or engine, or any part thereof, whereby such person is aggrieved, such appeal shall (subject to the specific provisions herein-before contained) be to the next going judges of assize at the assizes to be held for the county or for the city or place where such judgment, order, proceeding, or conviction shall have been given, had, or made, or such alleged offence shall have been committed, provided that such assizes shall be held at any time not less than twenty-one days after the time such judgment, order, proceeding, or conviction shall have been given, had, or made; and in case such assizes shall be held within twenty-one days from the time of such judgment, order, proceeding, or conviction, such appeal shall be to the going judges of assize for the assizes to be holden next but one after such judgment, order, proceeding, or conviction in such division of the county, city, or place as aforesaid, and that no such appeal shall be allowed, received, heard or determined unless the party appealing shall within ten days next after, or, if the court appealed from shall think right so to require it, immediately on the pronouncing, having, or making

Appeal from convictions to judges of assize.

of such judgment, order, proceeding, or conviction, enter into a recognizance, with two sufficient sureties, before such court, or before any magistrate of such county, city, or place, in a sum not less than fifty pounds, conditioned personally to appear at the said assizes to try such appeal, and abide the judgment of the said judges there, and to pay such costs and expenses as the said judges at the said assizes may award against him.

Form of dismissal.

LII. And be it enacted, that in case any justice or justices of the peace shall dismiss any complaint made under the authority of this Act or of the said recited Acts, or any of them, such dismissal shall be drawn up and signed by such justice or justices in the form following; (that is to say,)

"BE it remembered, that on the day of
in the year of our Lord C.D. of was
charged before me [or us] on the complaint of
A.B. of for that the said C.D. did [*here
state the offence charged, and the time and place when
and where the same was committed*], contrary to the
provisions of an Act, intituled [*here insert the title
of the Act*]; and it appearing to me [or us] that
the said C.D. is not guilty of such offence so charged
against him as aforesaid by the said A.B., we
therefore do adjudge that the said complaint be and
the same is hereby dismissed. Given under my
hand and seal [or our hands and seals, *as the case
may be*], at in the county of the
day and year first above written."

Appeal against dismissal.

And if any person prosecuting shall feel aggrieved by such order of dismissal it shall and may be lawful for such person to appeal to such judges of assize as herein-before directed with regard to appeals from any conviction, upon giving the like notice as herein-before prescribed, and entering into a recognizance with two sufficient sureties, before any magistrate, in any sum not less than ten pounds, con-

ditioned for the payment of all such costs and expenses as shall be adjudged against him on the hearing of such appeal.

LIII. And be it enacted, that it shall and may be lawful for the judges of assize assembled at any such assizes as aforesaid to rehear the subject matter of such conviction or order of dismissal as last aforesaid, and, and either affirm or reverse the same, or impose or increase or reduce any penalty which may have been adjudged, such imposition or increase nevertheless not to amount to a greater sum nor such reduction to be to a smaller sum than by this Act or the said recited Acts is directed; and in case such conviction shall be affirmed it shall be lawful for such judges to award such costs and expenses to the prosecutor, and any witnesses who may be examined in support of such prosecution, as they may think reasonable; and in case the party appealing from any such order of dismissal as aforesaid shall not appear at such assizes as aforesaid to prosecute the same, such order of dismissal shall be affirmed; and it shall be lawful for the said judges to award to the person accused such costs and expenses of witnesses as they may think reasonable; and in case any appellant or respondent on any such appeal shall not pay any costs or expenses which may be so awarded against him, his recognizances shall be estreated. Proceedings on appeal.

LIV. And be it enacted, that it shall be lawful for the commissioners, judges of assize, justices of the peace, or any of the courts in this Act or in the said recited Acts mentioned, where any complaint, suit, action, or indictment shall have been heard or tried and determined before them respectively under this Act or the said recited Acts, to order that the costs, charges, and expenses of and incident to such complaint, suit, action, or indictment, and the proceedings therein, and the hearing or trial and deter- Courts may award costs.

mination thereof, shall follow the event of the same respectively, and be borne and paid, by the party against whom the same shall have been determined, and that such costs, charges, and expenses shall be estimated, either as between party and party or as between attorney and client, at the discretion of such commissioners, judges, justices, or courts respectively; which costs, charges, and expenses, being so ordered as aforesaid, shall be recovered against the party therewith charged in the same manner as is herein-before specifically provided with respect to costs in certain cases.

Recited Acts to
be read with this
Act.

LV. And be it enacted, that this Act and the said recited Acts shall for the purposes thereof respectively be read and construed together as one Act, and the said recited Acts shall remain in full force and effect, except where the provisions thereof are repealed or altered by this Act or are repugnant thereto.

Saving rights of
the Crown.

LVI. Provided always, and be it enacted, that nothing contained in this Act or in any of the Acts recited or referred to shall extend or be construed to extend to alienate, defeat, lessen, abridge, or derogate from, or in any manner affect, any estate, right, title, interest, franchise, royalty, prerogative, or jurisdiction vested in or appertaining to the Queen's most excellent Majesty, her heirs or successors, in right of her Crown, or otherwise howsoever.

Act may be
amended, &c.

LVII. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

26 & 27 VICTORIA, CAP. 114.

An Act to amend the laws relating to fisheries in
Ireland. [28th July 1863.]

WHEREAS it is expedient to make further provisions for carrying into effect the law relating to the salmon fisheries in *Ireland*: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

I. This Act may be cited for all purposes as "the Short title.
 Salmon Fishery (*Ireland*) Act, 1863."

II. This Act shall not apply to *England* or *Scot-* Application of Act.
land.

Regulations as to fixed engines.

III. After the passing of this Act no bag net shall Prohibition of bag nets in certain places.
 be placed or allowed to continue in any river or the estuary of any river, as such river or estuary has been defined by the commissioners of fisheries or shall be defined by the commissioners under this Act, or within a distance of less than three statute miles from the mouth of any river as defined as aforesaid.

Any bag net placed or continued in contravention of this section shall be deemed to be a common nuisance, and may be taken possession of or destroyed; and any bag net so placed or continued, and any salmon taken by such bag net, shall be forfeited, and in addition thereto, the owner of a bag net placed

or continued in contravention of this section shall, for each day of so placing or allowing the same to be continued, incur a penalty of not less than five pounds and not exceeding twenty pounds.

But no person shall incur any penalty under this section in respect of any bag net if he removes the same within fourteen days after the passing of this Act: Provided always, that no bag net now legally existing shall be liable to be abated or removed, or be deemed illegal under this Act, by reason of its being within three miles of the mouth of a river in the whole of which, including all tributary rivers and lakes upon its course, the proprietor of such bag net has the exclusive right of catching salmon.

Penalty on new fixed nets.

IV. No fixed net that was not legally erected for catching salmon or trout during the open season of one thousand eight hundred and sixty-two shall be placed or used for catching salmon or trout in any inland or tidal waters.

Any net placed or used in contravention of this section shall be deemed to be a common nuisance, and may be taken possession of or destroyed; and any net so placed or used, and any salmon taken by such net shall be forfeited; and, in addition thereto, the owner of a net placed or used in contravention of this section shall, for each day of so placing or using the same, incur a penalty of not less than five pounds and not exceeding twenty pounds.

Commissioners to inquire as to fixed nets.

V. Subject to such appeal as is herein-after mentioned, the special commissioners appointed under this Act, herein-after referred to as the commissioners shall abate and remove all fixed nets erected or used for catching salmon or trout in *Ireland* that are in their judgment injurious to navigation, and shall inquire into the legality of, and if satisfied of their illegality remove, all such other fixed nets erected or used as aforesaid as are in contravention of any Act of Parliament or law in force in *Ireland*.

VI. Where any fixed net, other than a bag net prohibited by this Act, is in use at the time of the passing of this Act, and any person claims to have erected the same in pursuance of the Act of the session of the fifth and sixth years of the reign of her present Majesty, chapter one hundred and six, the commissioners may, on proof being given to their satisfaction that such fixed net has been erected in pursuance of the said provisions, certify to that effect, stating in the certificate the situation, size, and description of the net, and the person who has the right to erect the same, in pursuance of such last-mentioned provisions. A certificate given in pursuance of this notice shall be deemed to be an order of the commissioners, and to be subject to appeal as such. If unappealed from, or as confirmed or amended on appeal, such certificate shall be conclusive evidence that the person therein named is the person specified in the said Act as entitled to exercise the right therein given, but it shall not render any net legal that would be otherwise illegal by reason of its being injurious to navigation, a common nuisance to the public right of fishing, or otherwise in violation of common law or any Act of Parliament.

Certificate as to
certain fixed nets.

VII. Subject to such appeal as is herein-after mentioned, the commissioners shall inquire into the legality of all fishing weirs throughout *Ireland*, and shall remove such as are in contravention of any Act of Parliament or law in force in *Ireland*, with this qualification, that where a fishing weir, is illegal only by reason of its not having a free gap, as required by law, this section shall not empower the commissioners to remove such fishing weir, if an undertaking be entered into to the satisfaction of the commissioners, by the owner or other person interested in such weir, to make a legal free gap therein within a time to be prescribed by the commissioners, and a free gap is made accordingly.

Commissioners
to inquire as to
fishing weirs.

Persons unlaw-
fully erecting or
keeping up any
fishing weir upon
a river after no-
tice to forfeit £50
with costs of suit.

VIII. If any person has unlawfully erected or kept up, or shall unlawfully erect or keep up any fishing weir upon any river, and a notice shall be served in writing upon the proprietor or occupier of such weir, or his known agent, by the owner or occupier of any grounds on the banks of such river on which such weir has been or shall be erected, requiring him to prostrate or open the same within the space of thirty days from the service of such notice, if such proprietor or occupier of such weir shall not within that time abate or prostrate the same, he shall forfeit a sum of fifty pounds, together with costs of suit, to be recovered by action of debt in any of her Majesty's Courts of Record, one moiety thereof to be to the use of the person who shall sue for the same, and the other to the use of the conservators of the district in which such weir has been or shall be unlawfully erected or kept up; and the said court shall adjudge such weir to be abated at the expense of the defendant in such action; Provided always, that nothing in this section contained shall restrict the powers by this Act given to the commissioners.

As to construc-
tion of free gaps.

IX. In every fishing weir there shall be a free gap or opening in accordance with the regulations following, under the powers of this Act: (that is to say),

- (1.) The free gap shall be situate in the deepest part of the stream:
- (2.) The sides of the gap shall be in a line with and parallel to the direction of the stream at the weir:
- (3.) The bottom of the gap shall be level with the natural bed of the stream above and below the gap:
- (4.) The width of the gap in its narrowest part shall be not less than one tenth part of the width of the stream: Provided always, that such gap shall not be required to be wider

than fifty feet, and shall not in any case be narrower than three feet; and provided also, that no existing gap in any weir shall be reduced in width, or a gap of less width substituted in lieu thereof, or any alteration made therein so as to reduce the flow of water through such gap:

Provided always, that no person shall be entitled to any compensation by reason of the enforcing of any free gap in any weir, anything to the contrary in any Act notwithstanding.

X. The following rules shall be observed in relation to the construction of boxes and cribs in fishing weirs and fishing milldams; (that is to say),

As to construction of boxes and cribs in fishing weirs and fishing milldams.

- (1.) The upper surface of the sill shall be level with the bed of the river:
- (2.) The bars or inscales of the heck or upstream side of the box or crib shall not be nearer each other than two inches, and shall be capable of being removed, and shall be placed perpendicularly: The boxes, cribs, or cruives shall not be built over, or in any other manner hidden from public inspection:

And the owner of any fishing weir or fishing milldam that has attached thereto any box or crib in contravention of this Act shall bring the same into conformity with this Act within six months after the commencement of this Act; and he shall incur a penalty not less than five pounds and not exceeding twenty pounds for every day after the expiration of such period of six months during which he fails to comply with the provisions of this section; and any owner failing so to maintain the same shall incur a penalty not less than one pound and not exceeding five pounds for every day during which such failure continues.

XI. In any case where the breadth of the river where any chartered or patent fishing weir now exists

Extension of weekly close time when inexpedient

to make a free gap.

shall not exceed forty feet, and it might be inexpedient to require a free gap to be made therein, the commissioners may, if they think fit, instead thereof, direct by their order the extension of the weekly close time for a period of twenty-four hours.

Rules for enforcing free gaps in fishing weirs.

XII. The following rules shall be observed for the purpose of enforcing efficient free gaps in fishing weirs; (that is to say),

1. Where a weir is without a legal free gap at the time of the commencement of this Act, the owner of such weir shall within twelve months after the commencement of this Act make such a gap, and if he does not he shall incur a penalty not less than five pounds and not exceeding fifty pounds for every day after the expiration of such period of twelve months during which he does not make such gap:
2. Where a free gap has been made in a weir, but the same is not maintained in accordance with this Act, the owner of such weir shall incur a penalty not exceeding five pounds a day for each day he is in default:
3. No alteration shall be made in the bed of any river in such manner as to reduce the flow of water through a free gap: If it is, the person making the same shall incur a penalty not less than five pounds and not exceeding fifty pounds, and a further penalty of one pound a day until he restores the bed of the river to its original state:
4. No person shall place any obstructions, use any contrivance, or do any act whereby fish may be scared, deterred, or in any way prevented from freely entering and passing up and down a free gap at all periods of the year, or shall use any nets or other engines within fifty yards above or below any free gap; and any person placing any

obstruction, using any contrivance, net, or engine, or doing any act in contravention of the regulation lastly herein-before contained, shall incur a penalty not less than five pounds and not exceeding twenty pounds for the first offence, and not less than ten pounds and not exceeding fifty pounds for each subsequent offence.

XIII. Before removing any illegal fixed net or illegal fishing weir, the commissioners shall take the same proceedings as to summoning the parties interested in such net or weir, and as to hearing such parties, and any evidence they may produce, as the commissioners under the Salmon Fisheries Acts are thereby required to take where any parties complain of the erecting, maintaining, or using any fixed engine; and a summons issued by the commissioners shall, in respect of the proceedings to be taken by the commissioners, be deemed to be equivalent to a complaint made under the said section.

Proceedings for
abatement of
illegal nets and
weirs.

XIV. If any person feels aggrieved with any decision of the commissioners (and for the purposes of an appeal a dismissal of a complaint shall be deemed to be a decision), the person aggrieved may appeal as follows, and not in manner provided by the Salmon Fisheries Acts; that is to say,

Appeal from de-
cision of special
commissioners.

1. The appeal shall be to the Court of Queen's Bench in *Ireland*.
2. The appeal shall be by special case stating the facts and the grounds for the decision.
3. The special case shall be settled by the commissioners upon the application of the appellant to be made in writing within seven days after the delivery of the decision, and not afterwards.
4. The application for a case shall not be entertained by the commissioners unless the appellant at the time of making the same enter into

a recognizance before the said commissioners or a justice of the peace, with or without sureties, and in such sum as the commissioners or the justice think fit, conditioned to prosecute without delay the appeal, and to submit to the judgment of the Court of Queen's Bench, and to pay such costs as may be awarded.

5. The special case shall be signed by the commissioners, and shall be delivered to the appellant by the commissioners on payment by him of such fees as are herein-after mentioned.
6. On the receipt of the special case the appellant shall within three days serve a copy on the other party to the proceedings, and transmit by post or otherwise the original case to the proper officer of the Court of Queen's Bench in *Ireland*.
7. The fees to be charged in respect of the preparation of the special case shall be the same fees as are chargeable for the preparation of a special case by the Act passed in the session of the twentieth and twenty-first years of the reign of her present Majesty, chapter forty-three, intituled *An Act to improve the administration of the law, so far as respects summary proceedings before justices of the peace*, and herein-after referred to as "*The Summary Jurisdiction Act*."
8. The commissioners may refuse to state a case when they are of opinion that the application is frivolous, but if they so refuse they shall, on the requests of the appellant, give him a certificate stating the ground of their refusal.
9. When a party gives in good faith notice of an appeal under this section, but omits through mistake to do some act necessary to perfect the appeal, the Appellate Court may permit an amendment on such terms as it thinks just.

10. After the decision of the Court of Queen's Bench has been given on a case stated as aforesaid, the commissioners shall have the same powers to enforce that decision, when affirmed or amended, as they would have had to have enforced their original decision if it had not been appealed from.
11. Save as herein-before varied, the provisions of the Summary Jurisdiction Act as to the powers of the Superior Court, as to directing a special case to be stated, as to the enforcing of recognizances, and as to all other matters, shall apply to an appeal under this section in the same manner as if the words "justice or justices" in the said Summary Jurisdiction Act included "the special commissioners appointed under this Act."
- 12 Any Act required by this section to be done by the commissioners may be done by two of them, of whom the barrister herein-after mentioned shall be one.
13. The decision of the Court of Queen's Bench in respect of any case brought before them under this section shall, unless the court otherwise directs, be final.

XV. All powers, rights, privileges, and jurisdictions vested in or exercised by the commissioners of public works and the inspecting commissioners of fisheries, or any of them, by any Act relating to salmon fisheries, with the exception of the powers relating to oysters and white sea fish, shall be transferred to and vested in the commissioners appointed under this Act during their continuance in office and may be exercised by them.

Transfer of powers to new commissioners.

Miscellaneous.

XVI. Notwithstanding anything contained in the said Salmon Fisheries Acts, it shall not be lawful for any person or persons, although lawfully possessed

Fishing with nets near milldam.

of a several fishery for twenty years next before the passing of the Act of the session of the thirteenth and fourteenth years of the reign of her present Majesty, chapter eighty-eight, to use any box, crib, cruive, net, instrument, or device for taking fish (save and except rods and lines only) at or within fifty yards, either above or below a milldam, unless there is attached to such milldam a fish-pass of such form and dimensions as may be approved of by the commissioners, nor unless such fish-pass has constantly running through it such a flow of water as will enable salmon to pass up and down it; any person offending against this clause shall for each offence incur a penalty of not less than five pounds and not exceeding twenty pounds, recoverable by any one who will sue for the same.

Power to define
estuaries and
mouths of rivers.

XVII. Notwithstanding anything contained in the Salmon Fisheries Acts, or any definition of the commissioners acting in pursuance of those Acts, the commissioners under this Act shall mark out, by reference to maps or otherwise, what are to be the boundaries of mouths of rivers and estuaries, and the boundaries between the tidal and fresh water portions of every river, for the purposes of this Act and the said Salmon Fisheries Acts, with power where several streams flow into a common mouth or estuary to declare that the outlets of such streams form separate mouths or estuaries. The commissioners may also define the point or points of mouths of rivers or estuaries from which distances are to be measured under this Act and the Salmon Fisheries Acts.

Forfeiture of boat
in illegal fishing.

XVIII. If it be proved to the satisfaction of the justices that any boat, cot, or curragh found on or near waters frequented by salmon or trout has been used for the capture of salmon or trout during any part of the annual or weekly close time, the person or persons who shall be proved to have used such boat, cot, or curragh for the capture of salmon or

trout during the annual or weekly close time shall for the first offence be subject to a penalty not exceeding five pounds, and for the second or any subsequent offence, in addition to the foregoing penalty, the boat, cot, or curragh so used may be seized and forfeited; but this section, so far as relates to the forfeiture of the boat, cot, or curragh, shall not come into operation where a boat is used by some person other than the owner thereof, and the owner proves to the satisfaction of the justices that it was so used without his knowledge or consent.

XIX. It is hereby declared, that for the purposes of the said Salmon Fisheries Acts and of this Act "jenkin" and "gravelling" are deemed to be "salmon," and "spring tides" mean "ordinary spring tides." Declaration as to meaning of certain terms.

XX. There shall be repealed so much of the said Salmon Fisheries Acts as provides that it shall not be lawful to take or kill any salmon or trout between six of the clock on *Saturday* evening and six of the clock on *Monday* morning, or between the low waters next in point of time to those periods respectively, and the said Acts shall be construed as if it had been enacted therein, that no salmon or trout shall be fished for or taken in any way, except by single rod and line, between six of the clock on *Saturday* morning and six of the clock on the succeeding *Monday* morning; and all penalties imposed by the said Salmon Fisheries Acts, and the provisions made for enforcing the prohibition contained in the said Acts, and providing for the free passage of salmon and trout during the times therein in that behalf mentioned, shall apply accordingly, with this addition, that any net or other instrument, or the inscales or gates and rails of any crib, box, or cruive used between the times aforesaid shall be forfeited, and also that when any salmon or trout is taken at any fishing weir during the weekly close season in contravention of this Act and the said Salmon Fisheries Act, or when any box, crib, or cruive is during the Weekly close season.

weekly close season left unopened or otherwise left not in conformity with the said Acts, the penalty in that behalf imposed by the said Acts shall be payable in respect of each box, crib, or cruive in the weir in which any fish is so illegally taken, or which is left as aforesaid unopened or not in conformity with the said Acts.

Alteration of annual close time.

XXI. There shall be repealed so much of the thirty-third section of the Act of the session of the fifth and sixth years of the reign of her present Majesty, chapter one hundred and six, as provides that the annual close season, or period during which it shall not be lawful to take salmon, shall not comprise fewer than one hundred and twenty-four days in each year; and in lieu thereof be it enacted, that such annual close season or period during which it shall not be lawful to take salmon shall not comprise fewer than one hundred and sixty-eight days in each year; and until an alteration is made by the commissioners in pursuance of the powers given to them by the Salmon Fisheries Acts and this Act, there shall be added at the end of the close time now established for each fishery such number of days, if any, as may be required to make the number of close days constituting the annual close time in that fishery amount to one hundred and sixty-eight days.

Exception of salmon or trout caught or kept for certain purposes.

XXII. Nothing in this Act contained shall apply to any person who shall catch or attempt to catch, or shall have in his possession, any salmon or trout for the purposes of artificial propagation or other scientific purposes; and nothing in this Act contained shall prejudice the legal right of any owner to take materials from any stream.

Season for angling with single rod and line.

XXIII. Nothing in this Act shall be construed to affect angling with single rod and line, the close season for which shall be from the first day of *November* in each year to the first day of *February* in the year following.

XXIV. From and after the passing of this Act, it shall not be lawful for any person to use any net, except a landing net, for the capture of salmon or trout in the fresh water portion of any river, as defined by the commissioners under this Act, between the hours of eight o'clock in the evening and six o'clock in the morning, except so far as the same may have heretofore been used within the limits of a several fishery next above the tidal flow, and held under grant or charter, or by immemorial usage; and every person offending against the provisions of this section shall be subject to a penalty not exceeding ten pounds, and to the forfeiture of all boats, nets, and gear used in such illegal fishing.

As to use of salmon nets during certain hours in rivers.

XXV. No person shall in any manner whatever scare, impede, or obstruct the free passage of salmon or trout during the weekly close season; and any person acting in contravention of this section shall forfeit any fish taken by him, and any net or instrument used by him, and in addition thereto shall incur a penalty not less than two pounds and not exceeding ten pounds; but this section shall not apply to any person who takes fish legally by the single rod and line during the weekly close season.

As to scaring or obstructing the free passage of salmon or trout during weekly close season.

XXVI. The Salmon Fisheries Acts shall be construed as if in the schedule annexed to the Act of the eleventh and twelfth years of the reign of her present Majesty, chapter ninety-two, so far as relates to fixed engines, there had been inserted instead of the duties therein mentioned the duties following; (that is to say),

Additional licence duties on fixed engines.

Bag nets	£10
Stake nets, fly nets, or stake weirs	
(Scotch)	30
Head weirs	6
For every box, crib, cruive, or drum net in any weir for taking salmon or trout	10

and the boards of conservators shall not have authority to reduce or diminish the same, anything in the said Act or any other Act to the contrary notwithstanding.

Magistrates paying duty to be ex officio members of board. **XXVII.** Magistrates paying licence duty, and being owners of land abutting on rivers or lakes in any district, may act and vote as ex officio members of any board of conservators elected for any such district.

New elections of conservators. **XXVIII.** On the first Monday in the month of *October* in the year one thousand eight hundred and sixty-four all existing boards of conservators shall cease, and new boards shall be elected.

Residence or qualification of conservators. **XXIX.** No person shall be eligible for the office of conservator in any electoral division in which he does not reside or possess real property.

As to use of hydraulic machines. **XXX.** Where a turbine or similar hydraulic machine which may be injurious to salmon or the young of salmon in their descent to the sea, is supplied from a river frequented by salmon, the person owning or using such machine shall during the time in which such descent to the sea takes place, provide grating or other efficient means to prevent such salmon or young of salmon from passing into such machine, and in case such means be not provided such person shall forfeit a sum not exceeding fifty pounds, and also a sum not exceeding five pounds for each day during which such injury to the fry continues.

Salmon passes and fish ladders to be open to inspection. **XXXI.** All salmon passes and fish ladders shall be at all times open to the inspection of the commissioners and the conservators of the district, and of any person duly authorized by them or any of them.

Appointment of commissioners under sign manual. *Appointment and powers of commissioners.*

XXXII. Her Majesty may by warrant under the royal sign manual appoint any number of persons

not exceeding three, of whom one shall be an officer in the naval service of her Majesty, and another a barrister of not less than seven years standing at the bar, to be commissioners under this Act during her Majesty's pleasure, and upon every vacancy in the office of any commissioner by death, resignation or incapacity to act may appoint some other fit person to fill the vacancy: Provided always, that in the case of a vacancy by the death, resignation, or incapacity of any commissioner being such officer or barrister, the person so to be appointed shall be of the same profession as the officer or barrister in whose place he shall be appointed.

XXXIII. The commissioners appointed under this Act shall be styled "the special commissioners for Irish fisheries;" they shall cause to be made for their commission such seal or seals as they may require; and any summons, order, warrant, or other instrument, or copy thereof, purporting to be sealed with the seal of the commissioners, and to be signed as herein-after mentioned, shall be received in evidence without any further proof.

Commissioners to have a common seal.

XXXIV. No commissioner shall during his continuance in office be capable of being elected or of sitting as a member of the House of Commons.

Commissioners not to sit in Parliament.

XXXV. All warrants for the removal of any illegal net or illegal weir shall be signed by two at least of the commissioners, and all cases relating to the removal of such nets or weirs shall be heard by all the commissioners, but the opinions of two of them shall, in case of difference, decide any question; any other acts authorized to be done by the commissioners may be done by any one of them, and any summons under the seal of the commissioners, and signed by any person delegated by them, shall be deemed to be sufficiently executed.

The treasury to
fix salaries, &c.,
and appoint ad-
ditional officers.

XXXVI. The commissioners of her Majesty's treasury may from time to time fix such salaries as they may think fit for the commissioners hereby appointed, and also appoint such additional officers, clerks, and servants, at such salaries as the said commissioners of the treasury may think proper and necessary, and from time to time dismiss such officers, clerks, and servants, and appoint others in their place.

Duration of office
of commissioners.

XXXVII. The offices of the said commissioners, and all powers, rights, and privileges pertaining thereto, shall continue in force for two years only, and from thenceforth until the end of the next session of Parliament.

Powers of
commissioners.

XXXVIII. The commissioners may examine any witnesses on oath; and with respect to the following matters, that is to say,

1. Enforcing the attendance of witnesses, and the production of deeds, books, papers, and documents;
 2. The enforcing any order whatever made by them under any of the powers and authorities of this Act or the salmon fisheries Act,
- shall, in addition to any other powers conferred on them by this Act, have all such powers, rights, and privileges as the judges of her Majesty's Court of Queen's Bench in *Ireland* have for such or the like purposes.

Penalty for false
swearing.

XXXIX. Every person who upon examination before the commissioners, or any one of them, wilfully gives false evidence, and every person who wilfully swears, affirms, or declares falsely in any affidavit relating to any matter within the cognizance of the commissioners, shall be liable to the pains and penalties of perjury.

Proceedings be-

XL. The commissioners shall not be subject to

be restrained in the execution of their powers under this Act, nor shall any person be restrained from making an application under this Act to the commissioners, by order of any court of justice or by any other legal process, nor shall the commissioners be required by writ of mandamus or any writ of a like nature to do any act or take any proceeding under this Act, nor shall proceedings before them be removable by certiorari or other writ of a like nature.

fore commissioners not to be restrained by injunction, &c.

XLI. Proceedings before the commissioners shall not abate or be suspended by any death or transmission or change of interest; but in any such case of death or transmission or change of interest it shall be lawful for the commissioners, when they see fit, to require notices to be given to persons becoming interested, or to make any orders for continuing, suspending, or carrying on the proceedings, or otherwise in relation thereto, which to the commissioners appears just.

Proceedings not to abate by death, &c.

XLII. On the determination of the office of the special commissioners, all powers and duties transferred to, vested in, or imposed on them by this Act shall be transferred to and vested in two permanent inspectors of fisheries, to be appointed by and to be subject to the control of the Lord Lieutenant of Ireland.

Provision on determination of office of special commissioners.

Penalties, saving clause, &c.

XLIII. It shall be lawful for the Court before which any indictment or information for any offence against this Act, or for any nuisance in tidal or inland waters, shall have been preferred, heard, or tried and determined, to order that the costs, charges, and expenses of and incident to such indictment or information, and the proceedings therein, and the preferring, hearing, or trial and determination thereof shall follow the event of the same respectively, and be borne and paid by the party against whom the

Courts may award costs.

same shall have been determined, and that such costs, charges, and expenses shall be estimated, either as between party and party or as between attorney and client, at the discretion of such court.

Construction of Act.

XLIV. This Act so far as is consistent with the tenor thereof, shall be construed with the Acts relating to salmon fisheries in Ireland, and herein referred to as "the Salmon Fisheries Acts," and the definitions of words and expressions now in force in the said Salmon Fisheries Acts shall apply to the same words and expressions when used in this Act, but so as to include "a head weir" under the expression "fixed net," and that "fishing mill dam" shall mean a dam used or intended to be used partly for the purpose of catching or facilitating the catching of fish, and partly for the purpose of supplying water for milling or other purposes.

Recovery of penalties.

XLV. All penalties imposed by this Act shall be recovered and applied in manner in which penalties under the said Salmon Fisheries Acts are recoverable and applicable.

Saving clause.

XLVI. Nothing in this Act contained shall render legal or be deemed to recognize as legal, or to confer any title on any person in respect of any fixed net or fishing weir that is in contravention of any Act of Parliament or of the Common Law in force in *Ireland*.

As to fixed engines now in use.

XLVII. Provided always, that nothing hereinbefore contained shall prevent any person having any fixed engine now in use, and in respect of which licence duty has been paid, from being allowed to continue to use the same during the remainder of the present season.

26 VICTORIA, CAP. 10.

An Act for prohibiting the Exportation of salmon
at certain times. [20th *April*, 1863.]

WHEREAS the sale of salmon within the United Kingdom is prohibited at various times; that is to say, if caught in *England* within the limits of the Salmon Fishery Act, 1861, is prohibited between ^{24 & 25 Vict., c. 109.} the third day of *September* and the second day of *February*; if caught in any fishery district in *Ireland* is prohibited during such time as the capture of salmon is prohibited in that district; if caught in *Scotland* within the limits of "the Salmon Fisheries ^{25 & 26 Vict., c. 97.} (*Scotland*) Act, 1862," is prohibited between the commencement of the latest and the termination of the earliest annual close time fixed for any district; if caught in the river *Tweed*, as defined by "The ^{22 & 23 Vict., c. 70.} *Tweed* Fisheries Amendment Act, 1859," is prohibited between the fourteenth day of *September* and the fifteenth day of *February*: And whereas the capture or possession of foul or unseasonable salmon within the limits of the United Kingdom is prohibited at all times: And whereas the provisions of the said Acts are evaded by the exportation for sale in *France* and other foreign countries of salmon that cannot legally be sold within the limits of the United Kingdom: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited for all purposes as "the Short title.
Salmon Acts Amendment Act, 1863."

"Parts beyond seas" defined.

II. No part of the United Kingdom, however situated with regard to any other part, shall be deemed for the purposes of this Act to be parts beyond seas.

Export of unclean or unseasonable salmon, or salmon caught at certain times, prohibited.

III. No unclean or unseasonable salmon, and no salmon caught during the time at which the sale of salmon is prohibited in the district where it is caught, shall be exported or entered for exportation from any part of the United Kingdom to parts beyond seas.

All salmon exported or entered for exportation in contravention of this section shall be forfeited, and the person exporting or entering the same for exportation shall be subject to a penalty not exceeding five pounds in respect of each salmon so exported or entered for exportation.

The burden of proving that any salmon entered for exportation from any part of the United Kingdom to parts beyond seas between the third day of *September* and the second day of *February* following is not so entered in contravention of this Act shall lie on the person entering the same for exportation.

Recovery of penalties.

IV. All penalties under this Act may be recovered in *England*, except within the limits of the said *Tweed Fisheries Act*, as penalties under the *Salmon Fishery Act, 1861*; in *Ireland* as penalties under the Act passed in the session of the fifth and sixth years of the reign of her present Majesty, chapter one hundred and six, intituled *An Act to regulate the Irish Fisheries*; in *Scotland*, except within the limits of the said *Tweed Fisheries Act*, as penalties under the *Salmon Fisheries (Scotland) Act, 1862*; and within the limits of the said *Tweed Fisheries Act*, in manner prescribed by "the *Tweed Fisheries Act, 1857*."

ABSTRACT OF SECTIONS OF ACT OF 28TH
HENRY 8TH, CHAP. 22.

Clause 1 recites injury to the King's subjects 28 Henry 8, c. 22 using the navigation of his Majesty's rivers and waters of the Barrow, Suir, Nore, and Rye, to or from Waterford, Kilkenny, Rosse, Clonmel, in the counties of Kildare, Carlow, Wexford, Kilkenny, Waterford, Tipperary, and other towns and places, and the erection of weirs, and other obstacles in said rivers to the injury of the navigation and destruction of salmon fry.

Clause 2 enacts that it shall be lawful to and for every of the King's subjects in this land going with the sheriffs or seneschal of any of the before-named counties to prostrate all weirs there and thereafter to be made in any of the said rivers, to prostrate all such engines, devices, and make a convenient gap through all mill ponds, and subjects any person resisting to a penalty of fifty pounds.

Clause 3 requires the sheriff or seneschal of those counties after knowledge of any such weir as being erected or existing, or of mill ponds, without gap, to prostrate the same and make a gap in the mill ponds; if the sheriff refuses he is liable to a penalty of ten pounds; if any resident within the county refusing to aid the sheriff is subject to a penalty of ten shillings.

The 5 G. II, chap. 11, shortly reciting the fore- 5 Geo. 2. c. 11. going Act imposes a penalty on the re-erection of any such weir, for 1st offence £50, and for 2nd or subsequent offences, £100.

ABSTRACT OF BY-LAWS, ORDERS, &c., made by the COMMISSIONERS OF FISHERIES IN IRELAND, to 31st MARCH, 1863.

Place affected by By-Law, and Date thereof.	Nature of By-Law.
Dublin Bay... (10th Oct., 1842). ...	AGAINST TRAWLING. Prohibiting Trawling inside lines drawn from the Bailey Light-house, at Howth, to the Easternmost point of the rocks called the "Mugglins;" thence by a straight line to the Southern point of Dalkey Island; thence by a straight line across Dalkey Sound, in the direction of the signal station on Killiney Hill.
East Coast ... (14th Feb., 1851.) ...	Prohibiting Trawling within a line drawn from the Nose of Howth, to the Eastern point of St. Patrick's Island (Skerries); thence to Clogher Head; thence to Dunany Point; thence to Cranfield Point, in the County of Down.
Dundrum Bay, &c., ... (8rd Dec., 1851).	Prohibiting Trawling from Hellyhunter Rock, off Cranfield Point, to St. John's Point, both in the county of Down.
Belfast Lough ... (25th Oct., 1854, and 16th Feb. 1857.)	Prohibiting Trawling within a straight line drawn from the Castle of Carrickfergus, to Rockport, in the county of Antrim, and from 1st December to 1st April, and the use of nets of less mesh than one and three-quarter inches from knot to knot (except Draft Nets for Herring.)
Lough Swilly ... (27th June, 1844).	Prohibiting Trawling within a line from Knockalla Battery on the West Side, to Linsfort Church on the East side of the Lough.
Donegal Bay ... (16th Feb. 1857.)	Prohibiting Trawling within a straight line from the Bian Rock, to a place called Doorin point; and from a place called

Place affected by By-Law, and Date thereof.	Nature of By-Law.
Galway Bay ... (22nd March, 1843, and 9th Jan 1854).	the Blind Rock, to the Northern point of the Townland of Rossnowlagh Lower; and from thence to Kildoney Point; and from thence to a place called Pointinchose. Prohibiting Trawling within a line from Barna Pier to Gleninagh Castle. Also when large shoals of Herrings shall have set in the Bay, and while boats are engaged in Drifting for Herrings or Mackerel, and when boats shall commence Fishing for Herrings or Mackerel, that Trawl Boats shall keep at a distance of three miles from them.
Brandon Bay ... (23rd August, 1860).	Prohibiting Trawling within a line drawn from Brandon Point to Coosanea.
Dingle Bay ... (2nd March, 1852, and 28th Jan, 1862.)	Prohibiting Trawling within a straight line from Bull's Head, near Dingle, to Cununna, near Valentia. Repealing By-Law prohibiting Trawling.
Bantry Bay ... (27th March, 1858.)	Prohibiting Trawling within a straight line from Crowdy Point to Carrigskye Rock, and from thence to Reenavanny Point, on the North Shore of Whiddy Island. Prohibiting Trawling between sunset and sunrise.
Glandore Harbour ... (11th Sept., 1861.)	Prohibiting Trawling between the 1st day of May and 1st day of October in each year, within that part of the Harbour of Glandore, lying to the Northward of a straight line from the Telegraph or Signal Tower at "Foilnashark," or Filenashawk, on the north-eastern point of the entrance to the Harbour, and Sheela Point, on the Western shore.
Waterford Harbour, (2nd March, 1852, and 12th Sept., 1860.)	Prohibiting Trawling by boats exceeding five tons' measurement, within a line drawn from Creden Head to Temple Church.

Place affected by By-Law, and Date thereof.	Nature of By-Law.
Wexford Coast, ... (20th April, 1849.)	Prohibiting Trawling in all places where there are boats engaged in Herring or Mackerel Drift Net Fishing, and that Trawl Boats shall keep at a distance of at least three miles from all boats fishing for Herrings or Mackerel with Drift Nets. And whenever Herring or Mackerel Boats shall commence Drift Net fishing in any place, on or off the Coast of Wexford, the Trawl Boats shall depart therefrom, and keep at least three miles distant from the Drift Net Herring or Mackerel Boats.
Dungarvan Bay' ... (4th July, 1849).	TRAMMEL NETS. Prohibiting the use of Trammel and every other Fixed or Moored Net (except Bag or other Nets for the taking of salmon) in Dungarvan Bay, within the limit formed as follows, namely, the space lying between a line passing due East and West, through the Northernmost point of Helvick Head, and a line passing due East and West through the Southernmost Point of Ballinacourty Head, in the County Waterford; but to the North and East of the line through Ballinacourty Head, and to the South and West of the line through Helvick Head such Trammel or Moored Nets may be set, and remain set in the water from three o'clock, p.m., of one day, until nine o'clock, a.m., on the following day, during January, March, October, November, and December in each year; and from five o'clock, p.m., of one day, to seven o'clock, a.m., on the following day, during May, June, and July, August, and September. Also prohibiting such nets athwart or within 200 yards of any boat, which at the time of setting such net shall be moored, and the crew thereof engaged in line fishing; and to every train of such trammel or moored

Place affected by By-Law, and Date thereof.	Nature of By-Law.
Inver Ray ... (24th September, 1860).	nets shall be attached at least one floating buoy or board, upon which shall be painted in legible characters not less than one inch in length, in white upon a black ground, the Letter of the District, and the name of the owner to which such nets belonga.
River Slaney, County Wexford, (25th March, 1854, and 4th March, 1862.)	Prohibiting the use of Trammel Nets within or to the North-east of a line drawn from the Mouth of the Bunlaghy River to Doorin point. Prohibiting during the Close Season for salmon, the use of nets of any kind whatsoever, between Ferrycarrig Bridge and the town of Enniscorthy. Prohibiting, during the open season for salmon, the use of nets with meshes of less size than one and three quarter inches from knot to knot, between Ferrycarrig Bridge and the Town of Enniscorthy.
River Lee, Co. of the City of Cork.	Prohibiting, during the close season for salmon, the use of Draught Nets, or any other Net or Nets used as a Draught Net, having a foot rope and leads or weights affixed thereto, within the following limits, viz : in that part of the River Lee, situate between Patrick's Bridge, in the City of Cork, and a line drawn across the said River Lee, from Blackrock Castle, on the south, to the Western extremity of the Townland of Dunkettle on the North.
Argideen River, (24th Feb., 1860.)	Prohibiting the use of nets of any kind whatsoever in the tidal part of the river known as the Argideen River, in the County of Cork, situated between the junction of the Owenkeagh or Blind River with the said Argideen River, and

Place affected by By-Law, and Date thereof.	Nature of By-Law.
River Shannon, ... (5th Feb., 1856.)	the Bridge of Timoleague, all in the Barony of the East Division of East Carbery, and County of Cork. Prohibiting Net Fishing in that part of the River Shannon between Wellesley Bridge and the Railway Bridge, between 1st June and 12th February.
River Shannon, ...	First.—Prohibiting, between the 20th day of July and 1st day of November in each year, the use of Draught Nets, or any other net or nets used as a Draught Net, having a foot-rope and leads or weights affixed thereto, within the following limits, viz:—in that part of the River Shannon situate between the Fishing Weir known as the Lax Weir, and a line drawn due North and South across the said River Shannon at the Western extremity of Graigue Island. Second.—Prohibiting Draught Nets for the capture of fish of any kind, of a mesh less than one and three-quarter inches from knot to knot, to be measured along the side of the square, or seven inches, to be measured all round each such mesh, such measurements being taken in the clear when the Net is wet, in the tidal parts of the River Shannon, or in the tidal parts of any of the rivers flowing into the said River Shannon.
Lough Ree, River Shannon, (27th August, 1858.)	Permitting the use of Nets in Lough Ree, having a mesh of five inches in the round measured when the Net is wet.
Castlemaine Estuary ... (27th October, 1858.)	Prohibiting, during the Salmon Close Season, the use of Draft Nets having a foot rope and leads or weights affixed thereto, in the Estuary of Castlemaine inside the Bar of Inch.
Lough Neagh, ... (22nd April, 1846, and	Permitting Pollen to be taken by Trammel or Set Nets composed of thread or yarn

Place affected by By-Law, and Date thereof	Nature of By-Law.
24th Feb., 1860.)	of a fine texture, not less than ten hanks to the pound weight, doubled and twisted with a mesh of not less than one inch from knot to knot, from the 1st of March to the 29th September.
Galway River, Lough Corrib, &c., (24th July, 1846.)	Prohibiting the use of the instrument, commonly called Strokehaul or Snatch, or any other such instrument, in River Galway, Loughs Corrib or Mask, or their tributaries.
Clare and Clare-Galway or Turloughmore Rivers, Co. Galway,	Prohibiting the use of Nets of any kind whatsoever in any part of the rivers known as the Clare and the Clare-Galway or Turloughmore Rivers, in the County of Galway, above the junction of the said rivers with Lough Corrib, in the county of Galway.
Teelin Estuary, ... (24th Feb., 1860.)	Prohibiting the use of Nets for the capture of fish of any kind, with meshes of less than one inch from knot to knot (to be measured along the side of the square, or four inches to be measured all round each such mesh, such measurements being taken in the clear when the Net is wet,) on that part of the coast of the County of Donegal inside, or to the North-east and North of lines drawn from Rossan Point to Teelin Head, and from Teelin Head to Carrigan Head, and from Carrigan Head to Muckcross Point, all in the Barony of Bannagh, and Co. of Donegal.
Coasts of Wicklow and Wexford, (22nd April, 1846.)	Permitting, during the month of May, the dredging for Oysters from any of the public beds below level of lowest water of spring tides, on that part of the coast between Wicklow Head and Raven Point, north of Wexford Harbour, for purpose

OYSTERS.

Place affected by By-Law, and Date thereof.	Nature of By-Law.
Wexford Coast,	of replenishing and supplying artificial Oyster Beds or Layings, or other beds or layings, the exclusive property of any person, <i>but for no other purpose whatever.</i> ... First.—All persons engaged in fishing for or taking Oysters off the said Wexford Coast, south of Raven Point, shall cull all such Oysters as may be taken or caught; and shall not remove from any fishing ground or oyster bed any oyster of less dimensions than three inches, at the greatest diameter thereof, and shall immediately throw back into the sea all oysters of less dimensions than aforesaid, as well as all gravel and fragments of shells as shall be raised or taken while engaged in such fishing; and no person shall take from any oyster bed, rock, strand, or shore, off said Wexford Coast, south of Raven Point, any oyster of less dimensions than three inches, at the greatest diameter thereof; and any person offending in any respect against this by-law, rule, or regulation shall, for each offence, forfeit and pay a sum of two pounds. Second.—All persons are hereby prohibited from throwing into the sea, on any oyster bed, or oyster fishing ground off the said Wexford Coast, the ballast of any boat, or any other matter or thing injurious or detrimental to the oyster fishery; and all persons acting contrary hereto shall, for each offence, forfeit and pay a sum of two pounds.
Cork Harbour, (28th Oct., 1853.)	... First.—That between the 1st May and 1st September, no boat shall have on board any dredge or other implement for taking oysters. Second.—Every fisherman shall, on the fishing ground, cull all oysters, and shall not remove any oyster of less dimensions

Place affected by By-Law, and Date thereof.	Nature of By-Law.
Tralee Bay, (28th Sept., 1860.) ..	than two and a-half inches at the greatest diameter thereof; and shall throw back into the sea all gravel and fragments of shells as he shall raise while engaged in such fishing. Third.—All persons are prohibited from throwing into the sea, on any oyster bed or oyster fishing ground, the ballast of any boat, or any other matter or thing injurious to the oyster fishery. Fourth.—No person shall, between sunset and sunrise, dredge for, take, or catch any oysters within the Harbour of Cork. First.—That between the 1st day of April and the 1st day of November in any year, being the close season for oysters in the said Bay of Tralee, no boat, in the said Bay of Tralee, shall have on board any dredge or other implement for the taking of oysters; and if, between the periods aforesaid, there shall be on board any boat any such dredge or other implement for the taking of oysters, the master or owner of such boat shall, for each such offence, forfeit and pay a sum of five pounds. Second.—All persons engaged in fishing for or taking oysters in said Bay of Tralee, shall cull all such oysters as may be taken or caught; and shall not remove from any fishing ground or oyster bed any oyster of less dimensions than two inches and one-half, at the greatest diameter thereof, and shall immediately throw back into the sea all oysters of less dimensions than aforesaid, as well as all gravel and fragments of shells as shall be raised or taken while engaged in such fishing; and no person shall take from any rock, strand, or shore of said Bay of Tralee, any oyster of less dimensions than two inches and one-half, at the greatest diameter thereof; and any person offending in any respect against this

Place affected by By-Law, and Date thereof.	Nature of By-Law.
Achill Sound, Clew Bay, and Blacksod Bay, (15th Dec., 1860.)	by-law, rule, or regulation shall, for each offence, forfeit and pay a sum of two pounds. Third.—All persons are hereby prohibited from throwing into the sea, on any oyster bed, or oyster fishing ground in the said Bay of Tralee, the ballast of any boat, or any other matter or things injurious or detrimental to the oyster fishery; and all persons acting contrary hereto shall, for each offence, forfeit and pay a sum of two pounds. First.—That between the 1st day of April and the 1st day of October in any year, being the close season for oysters in said Clew Bay, Achill Sound, and Blacksod Bay, no boat, in the said Clew Bay, Achill Sound, and Blacksod Bay, shall have on board any dredge or other implement for the taking of oysters; and if, between the periods aforesaid, there shall be on board any boat any such dredge or other implement for the taking of oysters, the master or owner of such boat shall for each such offence, forfeit and pay a sum of five pounds. Second.—All persons engaged in fishing for or taking oysters in said Clew Bay, Achill Sound, and Blacksod Bay, shall cull all such oysters as may be taken or caught; and shall not remove from any fishing ground or oyster bed any oyster of less dimensions than two inches and one-half, at the greatest diameter thereof, and shall immediately throw back into the sea all oysters of less dimensions than aforesaid, as well as all gravel and fragments of shells as shall be raised or taken while engaged in such fishing, and no person shall take from any rock; strand, bed, or shore of said Clew Bay, Achill Sound, and Blacksod Bay, any oyster of less dimensions than two inches and one-half, at the greatest diameter

Place affected by By-Law, and date thereof.	Nature of By-Law.
	thereof; and any person offending in any respect against this by-law, rule, or regulation shall, for each offence, forfeit and pay a sum of two pounds. Third.—All persons are hereby prohibited from throwing into the sea, on any oyster bed, or oyster fishing ground in said Clew Bay, Achill Sound, and Blacksod Bay, the ballast of any boat, or any other matter or thing injurious or detrimental to the oyster fishery; and all persons acting contrary hereto shall, for each offence, forfeit and pay a sum of two pounds. Fourth.—No person shall, between sunset and sunrise, dredge for, take, or catch, any oysters within said Clew Bay, Achill Sound, and Blacksod Bay; and every person acting contrary hereto shall, for each offence, forfeit and pay a sum of five pounds.
Carlingford Lough, ... (17th April, 1860.)	First.—That between the 1st day of March and 1st day of November in any year, it shall not be lawful for any person to dredge for, take, catch, or destroy any oysters or oyster brood within the said Lough of Carlingford, or off or from any of the shores or rocks of said Lough, and any person offending against this by-law shall, for each such offence, forfeit and pay a sum of five pounds. Second.—That between the 1st day of March and the 1st day of November in any year, no boat, in the said Lough of Carlingford, shall have on board any dredge or other implement for the taking of oysters; and if, between the periods aforesaid, there shall be on board any boat any such dredge or other implement for the taking of oysters, the master or owner of such boat shall, for each such offence, forfeit and pay a sum of five pounds. Third.—All persons engaged in fishing for

Place affected by By-Law, and Date thereof.	Nature of By-Law.
	or taking oysters in said Lough of Carlingford, shall cull all such oysters as may be taken or caught; and shall not remove from any fishing ground or oyster bed any oyster of less dimensions than two inches and one-half, at the greatest diameter thereof, and shall immediately throw back into the sea all oysters of less dimensions than aforesaid, as well as all gravel and fragments of shells as shall be raised or taken while engaged in such fishing; and no person shall take from any rock, strand, or shore of said Lough of Carlingford, any oyster of less dimensions than two inches and one-half at the greatest diameter thereof; and any person offending in any respect against this by-law, rule, or regulation shall, for each offence, forfeit and pay a sum of two pounds. Fourth.—All persons are hereby prohibited from throwing into the sea, on any oyster bed, or oyster fishing ground in the said Lough of Carlingford, the ballast of any boat, or any other matter or thing injurious or detrimental to the oyster fishery; and all persons acting contrary hereto shall, for each offence, forfeit and pay a sum of two pounds.

**MOUTHS of RIVERS defined by the COMMISSIONERS, to
31st March, 1863.**

By the 22nd section of the 5th & 6th Vict., c. 106, it is prohibited for any person (save and except the proprietor of a several Fishery) to erect any **FIXED ENGINE** or contrivance for placing a **Net** **WITHIN ONE MILE** of the mouth of a river: and by the 27th section of same Act, and by section 44 of 13th & 14th Vict., c. 88, it is prohibited for any person (save such proprietor of a several Fishery) to shoot, draw, or use any net for taking salmon **WITHIN HALF-A-MILE OF SUCH MOUTH.** Note.—By section 3 of new Act no Bag Net is to be allowed in any River or three Miles of its Mouth as defined by the Commissioners.

Name of River.	Where Mouth defined.
Liffey, ...	By a straight line drawn from the eastern extremity of the North-wall to the Long-wall at Ringsend.
Bray, ...	By a straight line drawn from the Martello Tower on the north, to Martello Tower on south side of river.
Owenavarragh, or Courtown, ...	By a straight line drawn between the eastern extremities of the two piers forming Courtown Harbour.
Slaney, ...	By a straight line drawn northerly from Rosalare Point to the opposite shore.
Suir, Nore, & Barrow,	By a straight line drawn from the Magazine Tower, near the N.E. Point of Passage East, to the Point due south of Ballyhack Church, commonly called the Church Point.

Name of River.	Where Mouth defined.
Blackwater, ...	By a straight line drawn from S.W. corner of road at Moll Goggins' corner, in an easterly direction, to the opposite shore.
Ouvane, or Ballylickey,	By a straight line drawn from the southern point of the Townland of Barnagearagh, due east, to the opposite shore or bank.
Snave, or Coomhola, ..	By a straight line drawn from the western to the eastern side of the new Snave Bridge.
Glengariffe, ...	By a straight line drawn at the fall below Cromwell's Bridge.
Argideen, ...	By a straight line drawn through the centre of Bridge, at Timoleague, from east to west.
Adrigole, ...	By a straight line drawn from the southern side of the church in Townland of Adrigole, to southern side of chapel in Townland of Drumgarvan.
Owenshagh, ...	By a straight line drawn from the N.W. corner of the Quay Buildings to eastern point of Carrignafarnogue Rock.
Croanshagh, ...	By a straight line drawn from the north part of Carrigacappul, otherwise Horse Rock, to Reenkiilia Point.
Clonee, ...	By a straight line drawn from the north point of the beach of Arday Strand, due north, to Leillaun Peninsula.
Sheen, ...	By a straight line drawn from the eastern point of Old Kenmare Church to the west gable of John Lane's house.
Roughly 	By a straight line drawn from the boundary between the Townlands of Gurtagass and Killowen to nearest point of marsh on south side of river.

Name of River.	Where Mouth defined.
Blackwater, ...	By a straight line drawn from the "Outer Fishing Rock," on west side of river, to nearest point on opposite shore in Townland of Dromore Demesne.
Sneem, ...	By a straight line drawn from the "Oyster House" to the north point of Einaun Island.
Finnehy, ...	By a straight line drawn in direction from Reenagappul Point to Tubbrid Point.
Curraan, ...	By a straight line drawn from the south point of Townland of Waterville to north-east point of Townland of Basslycaun.
Inny, ...	By a straight line drawn from the Ferry House on north side, to nearest point of Murreagh Sand Bank.
Carra, ...	By a straight line drawn from Reennanalagane Point due N. to Black Point on opposite shore.
Laune, ...	By a straight line drawn from Lansharragh Point to mouth of small creek leading to Reen Quay.
Maine, ...	By a straight line drawn from the S.W point of pier under Stone House at Callinafercy, to the opposite point called "Keel Point."
Cashen, ...	By a straight line drawn from the point of the baronial boundary, in the Townland of Ballyeagh, in a direction south-west, to opposite shore.
Corrib, ...	By a straight line drawn from the east point of Nimmo's Pier to the south-west of Rinmore, called Rinmore Point.
Spiddle, ...	By a straight line drawn from Corrahowna Point to the opposite shore, meeting the townland boundary.

ccxiv *Mouths of Rivers defined by Commissioners,*

Name of River.	Where Mouth defined.
Ass, or Errive, ...	By a straight line drawn from the W. point of the Great Rock, due west, to the opposite shore.
Delphi, or Bundorragha, ...	By a straight line drawn from the Pier of Bundorragha to Pullavale Rock, on east side.
Ballycroy, ...	By a straight line drawn from Gubbaunduff, or Black Point, to Blainakearagh Point, on opposite shore.
Dunmorán, ...	By a straight line drawn across the northern extremities of the piers or jetties built by Board of Works.
Erne, ...	By a straight line drawn in a direction from point of headland, called South Rock, on the south, to the road leading to Fern's Hill, on the north.
Bunduff, ...	By a straight line drawn along the shore at low water mark in a direction from the Pulling Hole, N.E. across the river, to opposite shore.
Bundrowes, ...	By a straight line drawn along from Point-inchosc, County Antrim, to Magheracar, County Donegal.
Teelin, ...	By a straight line drawn along from Doonan Point in a S.W. direction across the river, to opposite shore.
Kilcar, or Ballydoo, ...	By a line drawn in a direction north-east and north-west across said river, 3,500 feet seaward of Kilcar Bridge.
Foyle, ...	By a straight line drawn from Culmore Fort to north-west angle of Culkeeragh House.
Roe, ...	By a straight line drawn from Ball's Point to the point of "Dargan's Embankment."

Name of River.	Where Mouth defined.
Bann, ...	By a straight line drawn from west extremity of Rabbit Warren, in direction of the dome of Downhill House, to opposite shore.
Glenariffe, ...	By a straight line drawn from "Waterfoot" Point, due south, to opposite shore.
Annagassen, or Glyde and Dee, .	By a straight line drawn in a direction from Annagassen Mills, on the south, to the coal store on right side of road from Annagassen to Castlebellingham.
Boyne, ...	By a straight line drawn in a direction from Maiden Tower to Baltray Point.

**LIST of LICENCES GRANTED by the COMMISSIONERS to
plant ARTIFICIAL OYSTER BEDS, to 31st March,
1863.**

Licence granted to.	For what place.
Lord Charles P. Clinton, ...	Berehaven, County Cork.
Thomas Eccles, Esq., ...	Harbour of Glengariffe, co. Cork.
Rev. Denis and John Mahony,	Estuary of River Kenmare.
Hon. David Plunket, ...	Killary Harbour, co. Galway.
J. K. Boswell, Esq., ...	Bay of Ballyconnelly, co. Galway.
William Foreman, Esq., ...	Bay of Ardbear, co. Galway.
A. C. Lambert, Esq., ...	Killary Harbour, co. Galway.
Archdeacon Magee, ...	Bays of Streamstown and Cleggan, county Galway.
John Richards, Esq., ...	Bay of Blacksod, county Mayo.
J. C. Garvey, Esq., ...	Bay of Westport, county Mayo.
Thomas Whyte, Esq., ...	Bay of Ballisodare, county Sligo.
J. O. Woodhouse, Esq., ...	Bay of Mulroy, county Donegal.
Burton Bindon, Esq., ...	Lough of Carlingford, co. Louth.
Rev. R. Wall, D.D., ...	Mannin and Ardbear Bays, county Galway.
Knight of Kerry, ...	Valentia Harbour, county Kerry.
W. McCormick, Esq., ..	Achill Sound, county Mayo.
Captain Houston, ...	Killery Bay, county Mayo.
Ebenezer Pike, Esq., ...	Lough Mahon, Estuary of Lee, co. Mayo.
M. C. Cramer, Esq., ...	Oyster Haven, county Cork.
William Pike, Esq., ...	Achill Sound, co. Mayo.
Edward Browne, Esq., ...	Ballinakill Harbour, co. Galway.
Colonel Roberts, ...	Mweenish Bay, county Galway.
James Walker, Esq., ...	Carrickfergus, Belfast Lough.
R. W. C. Reeves, Esq., ...	Clonderlaw Bay.
George Clive, Esq., ...	Achill Sound, Blacksod Bay.

LIST OF FISHERY LICENCES DISTRIBUTORS THROUGHOUT IRELAND.

Names of Districts.	Names of Distributors for District.	Addresses of Distributors.
Dublin.....	Mr. R. Kelly. Mr. R. Long. Mr. J. Flint. Messrs. J. Weekes & Sons.	56 Lr. Sackville-st. 14 Arran-quay. 17 Essex-quay. 27 Do.
Wexford.....	Mr. George W. Sullivan.	Enniscorthy.
Waterford.....	Charles Dobbyn, Esq. Mr. D. Godwin. Mr. Joseph Greene. Mr. Andrew Murphy. Margaret Dolan. Samuel Jellico & Co.	Waterford. New Ross. Kilkenny. Bagnalstown. Cashel. Caher.
Lismore	E. O. C. Foot, Esq. William Sheriffs, Esq. W. H. Parker.	Kanturk. Fermoy. Roseville, Tallow.
Cork	Mr. W. A. Hackett. Mr. H. Allportt. Mr. H. S. Brookes. Mr. T. Murray, (for Bandon). Mr. H. Desmond (a fisherman.) Mr. J. C. Spiller (stamp distributor.) Mr. J. Donovan, (postmaster.) Mr. N. White, (apothecary.)	Patrick-st., Cork. George's-st., Cork. Grand Parade, Cork. Patrick-st., Cork. Innoshannon. Clonakilty. Timoleague. Macroom.
Skibbereen.....	Mr. John Levis.	Skibbereen.
Bantry.....	Mr. R. Warner.	Reenadisert, Bantry
Kenmare	Jeremiah O'Shea, Esq.	Kenmare.
Killarney.....	Mr. John Spillane. Mr. William Edwards. Mr. James Barry.	Killarney. Castle-st., Tralee. Killorglin.
Limerick	Edmond Gabbett, Esq., J.P. Mr. Bourke. Mr. John Spellman. Mr. Charles Cullen. Mr. George Patrick. Mr. Michael Costello.	Corbally, Limerick. Limerick. Shannon Bridge. Athlone. Nenagh. Parsonstown.

Names of Districts.	Name of Distributors for District.	Addresses of Distributors.
Limerick.....	Mr. J. H. Dalton. Mr. John M'Carthy. Mr. William Edwards. Mr. Mayne. Mr. John Enright.	Abbeyfeale. Listowel. Tralee. Kilhaloe. Castleconnell.
Galway	T. Reid, Esq.	Galway.
Ballinakill..	Mr. James Tynan.	Ashlea Lodge, Westport.
Bangor.....	Mr. Michael Gallagher. Mr. John O'Donnell.	Bangor, Erris. Newport, Mayo.
Ballina	William Little, Esq.	Ballina.
Sligo... ..	T. H. Williams, Esq.	44 High-st., Sligo.
Ballyshannon....	Mr. James Lipsett.	Ballyshannon.
Letterkenny.....	Mr. Joseph Cunningham. Mr. William Hegarty.	Guidore Hotel Letterkenny Hotel.
Coleraine.....	Mr. A. H. Sheil.	Black Park, Toome Bridge.
	Mr. James Stevenson.	Clonmacate, Tartar- aghan, Armagh.
	Mr. George Kinhead.	Belfast Bank, Por- tadown, Armagh.
	Mr. John Armstrong.	Coagh, Moneymore, Co. Derry.
	Mr. John Taggart.	Coleraine, do.
	Mr. P. R. Davies.	Antrim, Co. Antrim.
	Mr. John Cashell.	Randalstown, do.
	Mr. Joseph English.	Crumlin, do.
Ballycastle.....	Mr. George Morton.	Ballymoney.
Drogheda.	Mr. James W. Bourke.	Cottage, Navan, Co. Meath.
	Mr. John Harold.	Dundalk, Co. Louth.
	Mr. Bernard M'Mahon.	Derry.
Londonderry.....	Mr. Robert Shaw.	

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